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Volume 17

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 25

FEDERAL TRADE COMMISSION, PETITIONER

vs.

THE CREDIT BUREAU, et al.

No. 26

FEDERAL TRADE COMMISSION, PETITIONER

vs.

AETNA PORTLAND CEMENT COMPANY

No. 27

FEDERAL TRADE COMMISSION, PETITIONER

vs.

MARQUETTE CEMENT MANUFACTURING COMPANY

No. 28

FEDERAL TRADE COMMISSION, PETITIONER

vs.

CALAVERAS CEMENT COMPANY, et al.

No. 29

FEDERAL TRADE COMMISSION, PETITIONER

vs.

HURON PORTLAND CEMENT COMPANY

No. 30

FEDERAL TRADE COMMISSION, PETITIONER

vs.

SUPERIOR PORTLAND CEMENT, INC., et al.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 28, 1947.
CERTIORARI GRANTED MARCH 10, 1947.

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40688 Washington, D. C.,
Monday, June 10, 1940.

40694 GEORGE W. COLE being called as a witness for Respondents and, having been first duly sworn, testified as follows:

Direct Examination by Mr. Withrow:

40695 I am associated with Medusa as traffic manager. I have held that position since 1922, that is, with the Sandusky Cement Company before the change in the name to Medusa. That change in name took place in 1928.

The traffic department is an integral part of the organization, and it is charged with the responsibility of securing the lowest possible rates on both in and outbound shipments, taking care of transportation matters which would include export as well as cargo coal shipments on the Great Lakes; freight claims, both overcharge and loss and damage; negotiating track agreements with the various railroads serving Medusa's plants; and working out schedules for prompt service to customers.

Q. Now, Mr. Cole, do you make an annual report on your activities as traffic manager?

A. Yes, sir.

40696 Q. And what does this report cover, in general?

A. It consists of the principal activities of the traffic department during that particular year, such as rate adjustments, and statement of the demurrage that might or might not have accrued at our various plants, the number of claims, both overcharge and loss and damage that were filed with the various railroads, and the amount that we recovered, the total cement that was purchased by the various railroads, the total carloads, both in and outbound that moved from and to our various plants.

Q. I think that is definite enough.

40701 I started to work for Lehigh in 1918. Prior to that time I was connected with several railroads in the local and general offices dealing with freight rates and claims; these railroads include the Illinois Central,
40702 Baltimore & Ohio and the L. & N. Railroad. I am a practitioner before the Interstate Commerce Com-

mission and before the State public service commissions of Wisconsin, Michigan, Illinois and Ohio. I have assisted in the preparation and presentation of rate cases before the Interstate Commerce Commission. These cases did not deal only with rates on cement.

40704 Mr. Withrow: Well, I offer to show at this time that this witness has participated, either as a witness or as counsel, in the following rate cases, and I will ask the Reporter to copy this list in the record:

Docket 14009. Illinois Commerce Commission Coal Rates, Southern Illinois to Dixon, Ill. Decided 10/30/29.

I. C. C. Docket 23332. Cement from Bay Bridge, Ohio. Decided 11/21/30.

I. C. C. Docket 22710. Cement, York, Pa., to New York Central R. R. points. Decided 4/15/30.

I. C. C. Docket 23398. Gypsum Rock, New Brighton, N. Y., to York, Pa. Decided 5/10/32.

I. C. C. F. S. Applications 14501 and 14791. Cement, Linwood, Iowa, to Chicago, Ill. Decided 3/2/33.

I. C. C. I. & S. Docket 3876. Proposed Cancellation of Combination Rule on Cement. Decided 10/3/33.

I. C. C. Docket 21492. Cement, Linwood, Iowa, to
40705 Western Trunk Line points. Decided 6/16/31.

I. C. C. Docket 19610. Switching rates various commodities, Chicago Switching District.

Public Service Commission of Wisconsin, Docket 2-R-255-MCT. Minimum Rate Investigation on Common Contract Motor Carriers' Rates. Decision pending.

Michigan Public Service Commission, Docket D3094. Minimum rate investigation—contract motor carrier rates. Decision pending.

40709 By Mr. Withrow:

Q. Mr. Cole, when you went with or were employed by the Lehigh Company in 1918, what was the nature of your work?

A Part of it was—

40710 A. Part of my duties were in the compilation of rate statements for exhibits in connection with any pending complaint, but most of my work consisted of working on freight rate books applicable on cement shipments from the various plants of the Lehigh Company, and checking cement rates from competing points of origin.

Q. And in what city were you located?

A. Chicago.

Q. Was that Lehigh's only traffic department office?

A. No, sir. That was one.

Q. And how long did you stay with the Lehigh Company?

A. Approximately four years.

40711 The witness identified Resp. Ex. 3199-A and B as purporting to be a Lehigh rate book, and which is in the same form in which he prepared rate books when he was associated with Lehigh.

40714 (RESP. EX. 3199-A and 3199-B, was offered and received in evidence.)

By Mr. Withrow:

Q. Who, in the Lehigh Company, used the rate book which you assisted in compiling, Mr. Cole?

A. As I recall, the sales department and the accounting department.

Q. And were any rate books of any rate service outside of the Lehigh Company used in the Lehigh office during the time you were there?

A. Not to my knowledge, Mr. Withrow.

Q. And how many employees were there in the two traffic offices of the Lehigh Company at that time?

40715 A. In Chicago, there were from eight to ten people in the traffic department; and in the Allentown, Pa., office there were thirty to thirty-five in the traffic department of the Lehigh Company.

Q. Now, when you came, in 1922, with the Sandusky Company, did it use freight rate books prepared or distributed by some freight rate bureau?

A. Not to my knowledge.

Q. And where, after you came there, did the Sandusky Company get its rate information?

A. We compiled our own rate books.

Q. And how many persons did the Sandusky Company have to handle its rate problems?

A. We had a maximum of six people, if I recall.

Q. And how many mills was the Sandusky Company operating at that time?

A. Two. They had a third, which was the White York plant.

Q. Well, let us limit our testimony to the standard gray Portland cement, Mr. Cole.

A. Two; one at Bay Bridge and one at Dixon, Ill.

40716 ("Respondents' Exhibit 3200-A to 3200-D.")

By Mr. Withrow:

Q. Mr. Cole, I show you Respondents' Exhibit 3200-A to D, and ask you to tell us what it is.

A. It is part of a rate book issued by the traffic department of the Medusa Cement Company on cement rates from its various plants.

Q. I notice that that is dated 1930. Had the Medusa Company added another mill, to-wit, Wampum, by that time?

A. In 1930, they had, yes.

Q. And is "D" a sample correction sheet to the rate books which the Medusa Company prepared at that time?

A. Yes, sir.

Q. And from what source was the rate information contained in those books prepared?

A. From railroad tariffs on file in the department.

Q. And would you say this is typical of the rate information you compiled first with the Sandusky Company and then with the Medusa Company up to this time?

A. Yes, sir.

Mr. Withrow: Your Honor, I offer in evidence at this time Respondents' Exhibit 3200-A to D (handing the documents to Mr. Wooden).

Mr. Wooden: I object to it as irrelevant and immaterial (handing the documents to the Trial Examiner).

40718 Mr. Withrow: I want to prove that the regular rate books kept and prepared by the Medusa Company could not under any stretch of the imagination be considered price books.

Mr. Wooden: That is just what I said.

Trial Examiner Norwood: I do not see how that is relevant.

Mr. Wooden: Rate books of non-base mills could not be considered pricing books; I agree to that.

40721 The witness identified Resp. Ex. 3201 A-B, as a Medusa form used in the department to show the rates from Medusa's various plants and competing plants to various destinations in its marketing area. He introduced this system when he came with Medusa in 1922 and he has kept the information up to date since that date.

Trial Examiner Norwood: Is that for use in addition to the information contained in the Institute rate books?

The Witness: This information that I just described

was taken from the tariffs years before we subscribed to the Institute books.

Q. Since subscribing to the Institute books has it been necessary to keep this rate information up, as shown by Respondents' Exhibit 3201 A and B?

A. Yes, sir.

40722 Q. How does the size of Sandusky's traffic department in 1925 compare with the size of the traffic department of the Medusa Company at the present time?

A. Smaller today.

Q. And that is in spite of the fact that you have more plants today than you did in 1925?

A. Yes, sir.

Q. Now, in connection with this Exhibit 3201 A and B, would you tell us briefly how the work or the amount of work and expense involved compares with the original setting up of this system with its maintenance up to date?

40723 A. The present maintenance, of course, is a great deal smaller than when we initiated that work.

By Mr. Withrow:

Q. And this work, as you said, you initiated it prior to the use of the Institute rates?

A. Yes, sir.

Q. Now, I notice on these exhibits, Mr. Cole, that under certain of these points there are two rates shown. For instance, after B and C and C, I, and L, you have two rates shown. Would you explain what that means?

A. Under certain headline points on these slips there are more than one rate shown, and that is due to the fact that those particular headline points are served by more than one railroad.

40724 (RESP. EX. 3201-A and 3201-B, was offered and received in evidence.)

By Mr. Withrow:

40725 Q. Mr. Cole, when your company used the rate prepared by you—the Sandusky Company did that in 1925 and 1926—where did you get your route information from?

A. We get the route information from either the tariff containing the rate or the tariff containing nothing but routes filed with the Interstate Commerce Commission.

The witness identified Resp. Ex. 3202 A to E as a route

book compiled by the Sandusky Company, showing destinations in Ohio in alphabetical order, and route numbers opposite thereto, with the delivering railroad shown indicating the routes applicable from Medusa's two Ohio plants to those points of destination. That information contained in Resp. Ex. 3202 (A to E) was obtained from railroad tariffs. Medusa still uses those route books.

10726 Mr. Withrow: Your Honor, I offer in evidence at this time Respondents' Exhibit 3202-A to E, inclusive (handing the documents to Commission's Counsel).

Mr. Wooden: Will you read the last question and answer?

(Last question and answer read.)

Mr. Wooden: No objection.

Trial Examiner Nogwood: Received as marked.

(RESP. EX. 3202-A to 3202-E, was offered and received in evidence.)

By Mr. Withrow:

Q. Does the Medusa Company receive and use Institute rate books at the present time?

A. Yes, sir.

Q. For how many States, if you can recall, does the Medusa Company receive Institute rate information?

A. I would say approximately 30, 31.

Q. Well, do you ship standard gray Portland cement in the 31 States, Mr. Cole?

A. No, sir.

Q. Then, for what do you use these Institute rate books other than your standard gray cement? For your specialties?

A. Yes, for our specialties.

10727 Q. Now, do you ship any of the specialties to States not covered by Institute rate books?

A. Yes, sir.

Q. You get your route information from the Institute?

A. No, sir.

Q. Have you ever asked The Cement Institute for route information?

A. No, sir.

Q. Now, what office receives the order for a shipment from, say, your Bay Bridge, Ohio, plant?

A. Cleveland sales department.

Q. And would you describe briefly the routine in the Cleveland office of determining what route is to be used?

A. If the order is received over the telephone, a phone order form is made out, brought to the traffic department for routing, which is furnished by the traffic department.

Q. And from what source do you fill in this route information on the order form?

A. We get that from the route books prepared by the department.

Q. Now, when there are various routes which you could use, what is the basis of selection of the route which you will use?

A. We endeavor to use the most direct routes.

Q. And when, for instance, an order comes in from Bay Bridge showing shipment to Cincinnati do you ever
10728 have to go back to the tariffs to use the route to any given dealer in Cincinnati?

A. No, sir.

The witness identified Resp. Ex. 3203 A to O as cards taken from Medusa's files on which is shown the complete routes from mill to certain destinations, these routes being taken from the railroad tariff. In addition to that Medusa shows opposite these routes the freight rate. Medusa has route cards to all the destinations where it normally ships cement from any of its mills. Those cards show all of the available routes between the shipping mill and the point in question; they show every available route that is published in the tariffs.

Q. Now, would you tell us from your experience as a rate man how the rates on alternative routes usually compare?

A. They are comparable.

Q. By that you mean they are the same?

A. Yes, sir.

Trial Examiner Norwood: That would be the
10729 case for the larger points, wouldn't it, rather than the smaller?

The Witness: No, not necessarily, Your Honor.

By Mr. Wathrow:

Q. Mr. Cole, take the State of Ohio, for instance: Do you know of any point in the State of Ohio where the rate from your mill would be different if you selected a different route? I am talking about commodity rate on cement.

A. No. From my experience with the company in checking these rates from our various plants I know of no rate

or no town in Ohio, where the rate would be different from any of our shipping points.

Trial Examiner Norwood: That is, by reason of the routing?

The Witness: Yes.

(RESP. EX. 3203-A to 3203-D, were offered and received in evidence.)

By Mr. Withrow:

Q. And it is from those cards that you insert the route information in filling out the bill of lading on the 40739 order form; is that correct?

A. Either this form or the route book form, yes.

Q. Now, would you tell us, Mr. Cole, whether or not it is necessary for the Medusa Company to insert this route information if it is inserted at the lowest rate in the rate book?

A. No, sir; it is not.

Q. Well, if it is not necessary in order to secure the lowest rate, would you tell us for what reason you do insert it?

A. Well, there are several reasons, Mr. Withrow. One in particular is the prompt service that we feel we can give to the customers by having these routes available in the form that they are shown, and from which we have already worked out train schedules; and another reason is that it permits us, in the case of our sales department receiving a fairly sized order from a contractor, or prior to receiving it, if the salesman is trying to get the order, it enables us through this information to pass it on to the sales department giving these various direct routes and schedules that obtain there.

Trial Examiner Norwood: You mean you call the attention of the salesman to some freight advantage that your mill has?

The Witness: Not exactly an advantage. In a good deal of cases, Your Honor, our people have found that contractors have questioned them as to the service, and in anticipation of that we prepared this years ago.

By Mr. Withrow:

Q. Well, then, you mentioned keeping some information about shipment schedules. I mean, of the railroads. Do I understand that you keep a file on that information?

A. Yes, sir. That lies in with the route that we check

from the tariffs. We naturally check these schedules in order to give us the most direct route from a service standpoint.

The witness identified Resp. Exs. 3204 and 3205 as cards showing the schedule on a possible movement of cement from Bay Bridge, Ohio, to two typical destinations in Ohio, showing the time of arrival at junction points of the train, the symbol number of the train and when it is due to arrive at destination. The route is also shown on the cards. Medusa keeps that information on file for all of its major dealer customers. This information is on file not only in Cleveland but at Medusa's district offices which are adjacent to the plants. It is from this information that Medusa's sales office or sales force is informed concerning the service which the company will be able to render; that is the particular purpose for it. That information is also used in connection with shipping from Medusa's mills and in expediting the shipments. Medusa uses that information in selecting the route to be used.

Mr. Withrow: Your Honor, I offer in evidence at this time Respondents' Exhibits 3204 and 3205 (handing the exhibits to Mr. Wooden).

Trial Examiner Norwood: Now, it is the Commission's contention that Respondents do not obtain routing information from The Cement Institute, and that they have to procure that information elsewhere. They contend that that is some of the evidence that the book is used for pricing only.

Now, this material here, which you are offering, seems to show that they do have to obtain that information elsewhere, and I just do not see where it meets anything directly.

Mr. Withrow: Our point is very simple, and it is two-fold; first, this testimony, plus the exhibits, show the difficulty and the impossibility of publishing in book form route information which takes care of that side; and the second point is that route information is not necessary under the Interstate Commerce Commission's basic act, but that the matter is done solely as a matter of service and is an assistance in sales because of the sales competition which is found in the cement industry where Medusa competes, so that we meet the point on those, too.

Trial Examiner Norwood: I had that vaguely in mind, and I have Counsel's explanation.

Go ahead.

40734 (RESP. EXS. 3204 and 3205 were offered and received in evidence.)

By Mr. Withrow:

Q. Mr. Cole, would you look at Respondents' Exhibits 3204 and 3205 and tell us how often those cards have to be changed and corrected?

Mr. Wooden: Same objection; irrelevant and immaterial.

Trial Examiner Norwood: Overruled.

40735 A. Not very often. Generally in the winter time there are fewer freight trains; naturally, due to seasonal decline in shipping.

By Mr. Withrow:

Q. And at that time you have to make variations on those cards?

A. Oh, yes, that is necessary. You have to keep these up currently.

Mr. Withrow: Your Honor, I offer to prove through this witness that from time to time it informs the railroads of the amounts of cement which it ships over their lines for the purpose of assisting the sales department and sales solicitation of the railroads, and further offer to prove through this witness that one of the reasons for routing shipments of cement from its mill is to assist in the

40736 solicitation of sales to railroads and not because it is legally necessary or essential to include routing information on the bills of lading in order to secure the benefit of the lowest rate, and I have here, but will not have marked, pursuant to our previous understandings with the Examiner, if the subject is ruled out we will not have them marked, documents which show the manner in which this company keeps track on a monthly and yearly basis of the shipments which it makes over various railroads and reports that information to the railroads as a part of their sales effort and as a part of the activities of this traffic department.

Trial Examiner Norwood: Proceed. The matter is excluded.

Mr. Withrow: Thank you, Your Honor.

By Mr. Withrow:

Q. Mr. Cole, I am not sure that the record is clear, and just briefly—I show you Respondents' Exhibit 3203-A and

B, and ask you if these are all of the routes from Bay Bridge, Ohio, to Cincinnati, Ohio?

A. Yes, sir.

Q. And what determines how many routes there will be between any two points such as Bay Bridge and Cincinnati?

A. Well, the rate in and of itself,—it is all according to how the rate is predicated. It is necessary for the
40737 longer lines to compete for this business; that naturally opens up other routes.

Q. Well, does the tariff list the number of available—

A. The tariff shows all the participating carriers, and it shows all the available routes.

Q. Now, there appears in the record, a statement to the effect that between any two points there is an infinite number of routes. Do you agree or disagree with that statement?

A. I do not agree with that.

Q. Well, from your experience as a traffic expert, would such a statement be correct?

A. No, sir.

40738 Q. Now, looking at those routes between Bay Bridge and Cincinnati again, I do not know how many routes there are, about eighteen or so. As a matter of actual practice, how many of those routes are of any service to the Medusa Company?

A. Not more than four.

40741 Q. Mr. Cole, I notice in Respondents' Exhibit 3206-A, for identification, which purports to cover a shipment from York to Hillsboro, N. C., that reference is made to the junction point at Potomac Yards, Pennsylvania Potomac Yards,—transferred to the Southern Railroad System. Would you tell us your reason for showing the junction points on these documents and including them on your bill of lading?

A. If we failed to, or, rather, omitted to show the junction point the initial railroad would take advantage of that and haul the shipment a great deal further over its own line to receive the higher division of the rate, and it would defeat our purpose in that we know in advance the schedule that the shipments would make, and for that reason we feel that the route should be shown on there.

Trial Examiner Norwood: Well, you show the route.

The Witness: I mean the junction point, Your Honor.

Trial Examiner Norwood: And you show the junction point?

The Witness: The junction point, Your Honor, is what I meant.

Trial Examiner Norwood: Wouldn't that purpose be served sufficiently by merely showing the rate—that 40742 is, showing the name of the road over which it is to pass?

The Witness: Oh, no, no, sir. We have found—

Trial Examiner Norwood: Wouldn't they have to give you the lowest rate?

The Witness: No, indeed. Pardon me. The rate in itself would be protected, but the shipment,—I was speaking from a service standpoint.

Trial Examiner Norwood: You mean the railroad would rather give more hauling for their part of the rate they are going to get?

The Witness: They want to get as much out of that division of the through rate, Your Honor, as they possibly can.

Trial Examiner Norwood: Would there be different divisions in those cases?

The Witness: Yes, sir.

By Mr. Willrow:

Q. If I understand correctly, the junction points are not shown in any way in order to secure or protect your rate,—the lowest rate?

A. No; it is just from a service standpoint.

Q. From your experience, Mr. Cole, in preparing freight rate books and route books and these train schedules showing junction points and so forth, would it be feasible to prepare a book covering all of this information?

40743 A. No, sir.

A. Take the State of Ohio, and to one point of destination, Cincinnati, from Bay Bridge. There are over twenty routes, and assuming that there are over 1,700 points of destination in Ohio, my guess, Your Honor, would be that the book would be too voluminous to handle.

Trial Examiner Norwood: Would there be much more data included than there is in the Institute book?

The Witness: Oh, by far; yes, sir. Whereas, we have one rate, for instance, in the rate book, from Bay Bridge to Cincinnati, you would have 20 routes which stretches out into quite a lengthy paragraph at times.

By Mr. Withrow:

40744 Q. Even though all of them had the same rate?

A. Yes, sir.

Q. Now, are the Institute rate books of any value to the Medusa Company without this route information?

A. Yes, sir.

Q. And of what value are they?

A. Well, from my experience, they are the most available source of information to find the lowest rate from point of origin to destination.

Q. Have you ever considered the question of how much work the Institute freight rate books save the Medusa Company to reduce traffic facilities?

40745 A. My study reflects that there is a very substantial saving to the company through the use of The Cement Institute's freight rate books.

By Mr. Withrow:

Q. You say a substantial saving. What did you calculate it would be, including wages, additional help, printing cost, and things like that?

A. Between eight and ten thousand dollars

A. a year.

The witness identified Resp. Ex. 3267-A to G, as a

40746 statement listing every tariff applicable to cement that Medusa has on file in the traffic department.

By Mr. Withrow:

Q. And are these the tariffs which your company would have to use in calculating cement rates if it did not have Institute rate books?

A. Yes, sir.

40748 (RESP. EX. 3267-A to 3267-G was offered and received in evidence.)

By Mr. Withrow:

Q. Mr. Cole, I would like to show you Commission's Exhibit 994 and Commission's Exhibit 1000 and ask you if those are two of the Institute rate books which the Medusa Company used at one time.

A. I recognize these as books that the Medusa Company have used in the past.

40749 Q. Would you tell us, Mr. Cole, whether or not those rate books are of any less value to you or to

the Medusa Company because they do not indicate what carriers participate in the rates included in the books?

A. No, sir.

Trial Examiner Norwood: Well, if you had them in there you would not have to look them up somewhere else, would you?

The Witness: If we had the routes in here?

Trial Examiner Norwood: Yes.

The Witness: No. If all the routes from the tariffs were in one book, we could look in that book.

Trial Examiner Norwood: Would that make the books more serviceable than they are in the present state?

The Witness: Well, in my opinion, Your Honor, they would not be practicable with the routes in addition to the rates.

By Mr. Withrow:

Q. Mr. Cole, I was not asking you about the routes. I was asking you—I want to make sure the record is clear—whether or not in order for those books to be of value to you you must know what carriers participated in the rates involved in the rate book.

A. Oh, no; that is not necessary.

Q. And would you tell us why you do not have 40750 to know what carriers participated?

A. For the reason that these books contain the official rates taken from the tariffs on file with the Interstate Commerce Commission. They are the lowest available rates from point of origin to destination, and for that reason it is not necessary to refer to any freight rate in order to get the rate.

Q. Now, is a shipper under a duty or any legal compulsion to show routing instructions in his bill of lading, Mr. Cole?

A. No, sir.

Q. Now, what are the duties of a carrier in the event he receives the bill of lading without routing instruction with a statement as to what the freight rate is from the origin point to destination?

A. It is the duty of a railroad accepting such a shipment under circumstances described by you to route it via the lowest route that would cover the rate inserted on the bill of lading.

4075] Q. And suppose the shipper had not included the rate, what would be the carrier's duty in that instance?

A. Had not included the rate or the route?

Q. Had not included either the rate or the route.

A. It is the duty of the carrier to move it via the cheapest rate.

Q. Or by any route applicable?

A. By any route carrying that rate, yes.

Q. Now, Mr. Cole, when both the rate and the route are inserted by a shipper in the bill of lading, and they do not coincide,—by that I mean that the rate does not apply over the route indicated, what is the duty of the carrier under those circumstances?

A. It is the duty of the carrier, in the event the route or the rate is not applicable via the route shown, to take it up with the shipper and to point this discrepancy out to him.

Trial Examiner Norwood: That is, prior to shipment?

The Witness: Yes, sir.

By Mr. Withrow:

Q. Now, Mr. Cole, referring back to those two freight rate books that I directed your attention to, would you tell us whether or not the fact that those Institute rate books did not have any legal status before the Interstate Commerce Commission affect in any way the usefulness
4076] of the books in so far as the Medusa Company is concerned?

A. Is it not necessary.

Q. And would you explain what you mean by that?

A. I mean, Mr. Withrow, that the rates in these Institute books are the official rates that are taken from the official tariffs on file with the Interstate Commerce Commission, and they are the legal rates even though they are stated in some other form.

Q. Now, in the event, Mr. Cole, that you had any controversy with the railroads over what a correct rate
4077] was, either during the time you used the Institute books or during the time you used books prepared in your own office, on what rate information did you base your claim or representation with the railroads?

A. On the tariff rate and in that case it is always necessary for us to cite the tariff authority giving the I. C. C. number and the effective date of the tariff.

Q. Now, still referring to the two rate books, Mr. Cole, would you tell us whether or not you have any difficulty in using the Institute rate books because the books do not show the minimum weights applicable on the shipments?

A. No, sir.

Q. And would you tell us how the question of minimum weight is handled, as far as you are concerned?

A. The minimum weight on cement is 50,000 pounds, and the railroads today, and for the last 15 years, have furnished our company with equipment that would hold 50,000 pounds, or more, of cement, and it is my own personal knowledge that the minimum weight is 50,000 pounds.

Q. Is that normally applicable in all the territory where Medusa markets cement?

A. Yes, sir.

Q. Then, from your experience would the size of the freight car furnished to you by the railroads affect the rate information contained in the Institute rate book?

A. No, sir.

40754 Q. Would you tell us, if you know, Mr. Cole, what is the minimum weight on shipments from mills located in the Lehigh Valley to destinations in the northeastern part of the United States?

A. Fifty thousand pounds.

Q. In that connection, I show you a tariff of the Lehigh and New England Railroad, I. C. C. No. A-6410, and ask if tariffs such as this are the source of the information concerning which you have just given testimony about the minimum weights from the Lehigh Valley?

A. Yes, sir. This tariff on its title page shows the minimum weight to be 50,000 pounds on cement in straight or mixed car-loads.

Q. Now, since you have been with the Medusa Company, has there ever been a time when the minimum from these mills has been 40,000 pounds, to your knowledge?

A. Not to my knowledge.

Q. Do you have a mill located in the Lehigh Valley?

A. Just south of there at York, Pa.

Q. And do the same minimums apply?

A. Yes, sir.

Q. Now, if Witness Sampson, on behalf of the Federal Trade Commission, testified that the minimum weight of

40,000 pounds from the mills located in the Lehigh Valley, would you agree or disagree with his testimony?

40755 A. I disagree with his statement.

Q. Now, you testified about the location of the York mill outside the valley.

Does the York mill have any advantage in freight rates over the mills located in the Lehigh Valley?

40756 A. Into the South, we have a slight advantage; into the West, a slight advantage; into the North, a disadvantage.

Q. And when you say a slight advantage, how much per hundred pounds, approximately.

A. To the West, approximately a cent a hundred, or four cents a barrel; to the South, about two cents a hundred, and to the North a disadvantage from two to three cents.

Q. Now, does the Institute rate book standing alone, Mr. Cole, give you sufficient information for billing shipments so as to secure the lowest available rate?

A. From my experience with those books, it does.

Q. And does Medusa use the Institute rate books in billing?

A. Yes, sir.

Q. Now, Mr. Cole, is it necessary to indicate on a bill of lading whether or not a station is a prepay station or an open station?

A. Yes, sir; in this sense—I mean, Mr. Withrow, that in the event we have a shipment for non-agency or prepay station, we prepay it, and that is what I meant by that. That is the indication, I mean.

Q. Well, now, suppose you tender a bill of lading to a prepay station and do not indicate it on the bill of lading; will you tell us just what happens in that situation?

A. In so far as our shipments are concerned at
40757 our various plants if such an occasion would arise, the agent would immediately phone our mill office and state that we have failed to prepay that particular shipment. He would not hold up the shipment. It would go on its regular way, but it would be covered by a prepayment.

Q. In other words, it would not be necessary for you in the first instance to indicate that on the bill of lading?

A. No. I might add in that connection, Mr. Withrow, that we are on what is called a credit basis on either 48

hours or 96 hours, whatever we make our settlements through our general office; all prepayments are made through the general office and not through the mill office.

Q. So that that prepaid shipment would be made a part of that periodic settlement?

A. Yes, sir.

Q. I believe you testified that it was your understanding that these rate books contained the lowest rate in effect between the points indicated?

A. Yes, sir.

Q. Mr. Cole, would you tell us whether or not in the use of these rate books by your traffic department you have had any trouble because the rate book did not state on its face that it quoted the lowest rate between the points involved?

A. No.

Q. How does the Medusa Company keep up with
10758 changes in rates and developments in traffic matters?

A. We are on the mailing list of all the carriers, not only those serving our plant but also those that are participants in the rates from our mills, and we receive current tariffs and supplements thereto, and we also employ a special service here in Washington that sends us daily information on every cement tariff and supplement that is filed by any railroad in our marketing area.

Q. What is the name of that last?

A. The service is called The Traffic Service Corporation.

Q. And do you also subscribe to the Daily Traffic World and Traffic Bulletin?

A. Yes, sir. That,—the service I spoke of,—is included in those bulletins which we receive daily.

Q. And when the Medusa Company, in the manner described, receives information concerning change in rates affecting cement, could you tell us what you do or what your department does?

10759 A. We are guided, of course, by the effective date of the change in the rate. If it is within a week or so, we post our records and notify the sales department as well as the accounting department.

By Mr. Withrow:

Q. Could you tell us whether or not you wait to receive any notice from the Institute before you notify these various departments of changes in rates?

A. No, sir; we do not.

Q. Do you ever have any occasion to check the accuracy of the Institute rate books?

A. Yes, sir.

Q. Under what circumstances?

A. Well, we check them, I would say, most every day with supplements coming in, as I mentioned a few moments ago, and there are numerous ones. As a matter of fact, we have one man that does nothing else but handle tariffs and supplements, and any changes noted therein we check against the Institute book.

Q. And what has this check revealed in so far as the accuracy of the Institute rate books?

40760 A. In our experience over a check of many years, —in fact, ever since we have been using the service of the Institute, we found very, very few errors.

Q. Well, have you ever found an error in rate in any market where you sold in any one year, say, as much as four or five carloads of cement?

A. In any one year?

Q. Yes.

A. No, I would not say that we have.

Q. Has the occasion ever arisen, to your knowledge, Mr. Cole, where the Institute rate books showed a rate for which there was no applicable route shown by the tariffs?

A. I believe on one occasion we did question a rate with the Institute where the routing was involved.

Q. Do you recall that one instance?

A. No, sir; I do not recall.

Q. Now, in the few instances, or in any instance where you find an error in the Institute rate book, will you tell us what you use, the Institute rate or the correct rate?

A. We use the correct rate, which would be, of course, in our opinion, the railroad rate, tariff rate, regular tariff rate.

40761 Q. Do you inform the sales department as to what the correct rate is?

A. Yes, sir.

Q. Mr. Cole, I show you Respondents' Exhibit 3208, and ask you to tell us what it is.

A. This is a letter that I wrote to The Cement Institute asking them authority for several rates mentioned in the letter.

Q. And is that the instance that you were referring to

a few moments ago when there was a question of the correctness of rates and routings?

A. Yes.

40762 (RESP. EX. 3208 was offered and received in evidence.)

By Mr. Withrow:

Q. Did you receive an answer from The Cement Institute to your letter we have just received there, Respondents' Exhibit 3208, Mr. Cole?

A. I do not recall, but I—

Q. Well, I show you Commission's Exhibit 545-4-N, and ask you if that is a reply which you received from The Institute?

A. Yes, sir.

Q. I show you Commission's Exhibit 545-4-N and 4-L, and ask you if this is some of the further correspondence you had with the Institute concerning possible further errors in the Ohio rate book?

A. Yes, sir; they are.

Q. Now, in looking at 545-4-L and 4-N, were you familiar with that transaction at the time, Mr. Cole?

A. Yes, sir.

Q. And would you tell us now, if you know, were you or the Institute correct in this—I mean, was your office or the Institute correct in this instance with refer-

40763 ence to the rate shown in the Institute rate book?

A. The Institute was correct in connection with the matter shown on these two exhibits.

40764 The Witness: In connection with Exhibit 545-4-L and 4-N, it is not a question of rate. The points involved in here are non-agency stations, and if you route them via one junction you obtain a higher rate than you would if you route them via another junction. The

40765 difference in the rate would be a half a cent. When I say it is not a question of rate it really is not. It is the manner in which you route these shipments.

By Mr. Withrow:

Q. Mr. Cole, I show you Respondents' Exhibit 3209, for identification, and ask you if that is a letter concerning the same transaction as Commission's Exhibits 545-4-L and 4-N?

A. Yes, sir.

Mr. Withrow: Your Honor, I will offer in evidence

Respondents' Exhibit 3209, which was formerly marked Commission's Exhibit 545-4-K (handing the document to Mr. Wooden).

Mr. Wooden: I would like to ask a question on voir dire.

Trial Examiner Norwood: Go ahead.

Examination on Voir Dire

By Mr. Wooden:

Q. Mr. Cole, is this the letter that explains your statement that the Institute was correct?

A. Yes, sir.

Q. And you were incorrect, and the difference between your company on that matter of the half a cent because of the routing by way of certain junction points?

A. Yes, sir; that is correct; yes, sir.

40766 (RESP. EX. 3209 was offered and received in evidence.)

Direct Examination (Continued)

By Mr. Withrow:

Q. Now, Mr. Cole, I would like to call your attention to this entire correspondence here. It starts with Respondents' Exhibit 3208, Respondents' Exhibit 3209, and Commission's Exhibit 545-4-L and 4-M and 4-N, and ask you whether or not this transaction was handled by a rate clerk in your department on behalf of the Medusa Company?

A. Yes, sir.

Q. Mr. Cole, are you familiar with the amount of notice given on changes in freight rates, generally?

A. Well, how do you mean that, Mr. Withrow?

Q. Well, how long do the applications have to be filed before the rates become effective?

A. The statutory notice is 30 days on interstate traffic.

Q. And what is the smallest length of time on general rate change or rate change in the specific rate?

A. We have had instances where they change it

40767 on one day's notice on special application being made to the Commission.

Q. Now, under the circumstances where only one day's notice is used, what has been your experience as to whether or not a shipper had the information as to what the freight

—the new freight rate was within that one-day period after filing?

A. Speaking for the Medusa Company, we would be in possession of that information.

By Mr. Withrow:

Q. Well, have there ever been any instances where the freight rates from the mill had become effective prior to the time that you received notice of the new rate?

A. From the Institute, you mean?

Q. No, I am talking about notice from any source.

A. No, not to my knowledge.

Q. And, I believe you have already described the sources from which you get that rate information?

40768 A. Yes, sir.

Q. When you find these new rates, do you call the new rate to the attention of the various sales departments and auditing and billing departments of the Medusa Company?

A. Immediately.

Q. Now, Mr. Cole, does the situation arise where you sometimes ship on one originating carrier and the dealer or customer wants delivery on the siding of another railroad?

A. Yes, sir.

Q. Under such circumstances, are there any switching charges involved in addition to the line-haul rate between your mill location and the customer's location?

A. In my experience, I have never had occasion to run across a situation like that.

Q. Well—

A. Except perhaps in this manner, that if a contractor is going to take delivery on a team track of a delivering line, that did not receive a road haul, there would be an addition to the road haul rate that would be a switching charge of some kind.

Q. Now, on such shipments who normally pays that switching charge; is it absorbed by the railroad, or does the contractor pay it or does the cement company pay it?

A. Well, in the last instance I described, that rate would be in addition to the line-haul charge, but in the ordinary movement of freight taking delivery on a

40769 line other than the originating line, the charges are always absorbed out of the line haul.

Q. Well, do you know of any destination where there

is a switching charge, normal charge at that destination, in addition to the line haul?

A. I do not recall any.

Q. Does the Medusa Company sell any cement or ship any cement into the Washington, D. C., market?

A. Yes, sir.

Q. And from what mill does it make shipments?

A. Our York, Pa., plant.

Q. Mr. Cole, I show you Respondents' Exhibit 3210, and ask you if that is the correct tabulation of the railroads whose tracks serve Medusa's mills and silos—by that, I mean railroads on which those mills and silos are specifically located?

A. Yes, sir.

40770 (RESP. EX. 3210 was offered and received in evidence.)

40771 Q. Now, are any of your dealers in the Washington market, Mr. Cole, located on railroads other than the Pennsylvania or Western Maryland, that service York, Pa.?

A. Yes. We have customers on railroads other than the two you mentioned. As a matter of fact, the Western Maryland does not run into Washington. I do not know whether I—I think that is the way your statement read.

40772 The witness identified Resp. Exs. 3211 through 3214 as dealer cards with invoices attached covering shipments by Medusa to Medusa dealers located in Washington. The handwriting on Resp. Ex. 3211-D is that of his chief clerk, assistant traffic manager, Mr. Criswell. That information was prepared pursuant to witness' direction and under witness' supervision. Witness vouches for its accuracy.

40775 Q. Mr. Cole, would you look at those papers marked Respondents' 3211 through 3214. Are you familiar with the shipments made by your company from York, Pa., to Washington, D. C.?

40776 A. Yes, sir.

Q. And would you tell us whether or not the same rate applies on a shipment from your mill in York to dealers located on any of the different railroads within the City of Washington?

A. In connection with these shipments, they all appear to have taken delivery on the B. & O. or the Pennsylvania

Railroad, and both of those railroads enjoyed a road haul, and there is no additional switching or no additional charge such as a switching charge over and above the line-haul rate, and in all my experience we have never paid a switching charge at Washington, D. C., on any of our shipments of cement into Washington.

Q. You said the Medusa Company has not paid.

A. Yes, sir.

Q. To your knowledge, has any customer of the Medusa Company ever paid?

A. Nor has any of our customers paid any additional charge. I would have known that if such an instance had arisen.

Q. And was the rate which was paid either by the Medusa Company or by the purchaser the rate which is contained on Respondents' 3211-D, that pencil memorandum?

A. Yes, sir. That is the history of the rate, 1928 up to date.

40777 (RESP. EXS. 3211-A to 3211-E, 3212-A to 3212-D, 3213-A to 3213-D, 3214-A to 3214-D were offered and received in evidence.)

By Mr. Withrow:

Q. Mr. Cole, you said that you would know if a dealer paid, in addition to paying the freight rate to your account shown on the invoice, a switching charge. Would you tell us how you know about it?

A. He would either debit our company or send in the additional switching charges—that is, the bill for the switching charges, and that is the way it would come to my attention.

40778 Q. And in this connection, Mr. Cole, have you examined the tariffs to see whether or not they provide that the railroads will reciprocally absorb the switching in the Washington area?

A. Yes, sir.

40779 Q. Would you tell us, Mr. Cole, what tariffs you referred to?

A. I referred to the Terminal Switching Tariffs of the line haul carriers transporting our cement into Washington.

Q. And those are the Pennsylvania and the B. & O., I believe you said?

A. The Pennsylvania and the Western Maryland, B. & O.

Trial Examiner Norwood: Now, is that sufficient and definite to enable Respondents' Counsel to locate the tariff you are speaking of?

The Witness: Yes, sir.

40780 Q. Now, what did you find in examining these tariffs with reference to the reciprocal absorption of switching charges?

A. There is a stipulation in the tariff that the road-haul carrier will absorb the switching charge of the delivering line if the road haul carrier receives a minimum. I believe in the instance of Washington it is about $19 per car in line haul revenue.

Q. Now, would you tell us what the practice is, Mr. Cole, with reference to the Medusa Company indicating on the bill of lading the railroad and the siding at which a customer wants delivery?

A. We show the—in all cases we show the delivering line and the siding, if it is necessary to show the siding.

Q. Now, do you ship by rail from all of your mills and silos?

A. Yes, sir; by rail and truck.

Q. But do you make many rail shipments, say, from Chicago and Milwaukee and Holland?

A. No, sir.

40781 Q. Mr. Cole, I show you Respondents' 3221, and ask you if these are all of the railroads which serve the shipping point at which the Medusa Company is located, not only your mill but any place at the point where your mill is located?

Trial Examiner Norwood: I thought that other one did that?

Mr. Withrow: Your Honor, there is a difference. In one we were emphasizing the railroad on which the mill was located. I now want the railroads at that point to find out if there are reciprocal switching agreements between all of the railroads at the shipping point.

Trial Examiner Norwood: Thank you.

A. Yes, sir.

40782 (RESP. EX. 3221 was offered and received in evidence.)

By Mr. Withrow:

Q. Mr. Cole, I show you Respondents' Exhibit 3215-A to H, and ask you to tell us what they are.

A. The first four documents consist of destination paid

freight bills on shipments of cement moving from our Manitowoc, Wis., plant to destinations in Wisconsin.

The balance of the documents show the history of the reciprocal switching rates with tariff authority involving these two, or covering the movement of these shipments.

Q. Now, with reference to those statements of the tariff authorities, have you checked them so you can vouch for the accuracy of the statements?

A. Yes, sir; I have checked them.

40785 Q. Would you look at Respondents' Exhibit 3215-H, Mr. Cole, and tell us how you get that specific quotation—how that specific quotation could be verified at the Interstate Commerce Commission in Washington?

A. That can be verified by—there is reference shown to item 130, and item 130 appears in C. & N. W. Tariff 8408-P I. C. C. 10568.

Trial Examiner Norwood: Document G shows that,—the first of the documents shows that?

The Witness: This here; yes, sir; and this is an excerpt.

Trial Examiner Norwood: Yes.

The Witness: Yes, sir.

(RESP. EX. 3215-A to 3215-H was offered and received in evidence.)

By Mr. Withrow:

Q. Mr. Cole, in an effort to cover this for all of the shipping points listed on Respondents' Exhibit 3221,

40786 would you tell us whether or not the reciprocal absorption of switching charges by the railroads at the point of origin, such as is evidenced by Respondents' Exhibit 3215-A to H, also exist at the shipping points listed on Respondents' Exhibit 3221?

A. Yes, sir.

Q. Mr. Cole, when did you first become familiar with a table which converted rates per hundredweight into rates per barrel of cement?

A. That was some time ago. I just do not recall now, but it is quite a long time ago.

Q. As far as you know, was there any agreement between the Sandusky Company to prepare their conversion tables in any particular form?

A. No, sir.

Q. And what was the basis of the conversion tables which you prepared at the Sandusky Company?

A. That is converting into hundredweight,—what was the basis for it?

Q. Yes.

A. Well, as I recall, it was—our department was asked to work up a conversion table for the convenience of the accounting department as well as the sales department in quoting on inquiries.

40792 Q. Mr. Cole, did the Sandusky Company at the time you prepared the conversion table for its use adopt or convert in such a manner as to secure for the Sandusky Company a freight profit?

A. No, sir.

Q. Mr. Cole, is the material in the form of rate tariffs and routing information and train schedules available to customers of the Medusa Company at their respective delivery points?

A. No, sir.

Q. What tariff information does the local agent in the small town keep on file?

A. He generally keeps a few tariffs on shipments originating at his station rather than on shipments being received at his station.

Q. So that in many circumstances they would not

40793 have the tariff of your originating railroad?

A. No, sir.

Mr. Withrow: Now, Your Honor, I offer in evidence at this time Respondents' Exhibit 3217-A to C, and Respondents' Exhibit 3218-A and B, being copies of documents duly certified by W. P. Bartel, secretary of the Interstate Commerce Commission (handing documents to Mr. Wooden).

40794 Mr. Withrow: Mr. Simpson testified at record page 9486, and following, that a station agent kept on file all the tariffs naming rates from stations in that territory to points in that terriory and was allowed to express the opinion that this would probably embrace the tariffs on the bulk of all cement shipments in that territory. We are offering it to rebut that statement by Mr. Simpson specifically.

40795 (RESP. EXS. 3217-A, 3217-B, 3217-C, 3218-A, and 3218-B were offered and received in evidence.)

By Mr. Withrow:

Q. Mr. Cole, have you ever served on the so-called Rate Committee of The Cement Institute?

A. Not that I recall.

Q. Have you ever served on the so-called Rate Book Committee of The Cement Institute?

A. No, sir.

Q. Or on the general committee of The Cement Institute?

A. No, sir.

Q. Did you assist in any way in the organization of either the Chicago or the Bethlehem rate bureaus of The Cement Institute?

A. No, sir.

Q. Did you assist in any way in the preparation of the original Institute freight rate books?

A. No, sir.

Q. Or in the preparation of any other freight
40796 rate information distributed by the Institute?

A. No, sir.

Q. Have you or the Medusa Company, to your knowledge, entered into any agreement or understanding with competitors not to use a new rate or a correct rate until it was promulgated by The Cement Institute?

A. No, sir.

Q. Have you ever entered into any agreement or
40797 understanding that you will use the rate given in the Institute book rather than the true railroad rate and the Interstate Commerce Commission rate?

A. No, sir.

Q. Now, I believe you testified that you used the Institute rates for the purpose of arriving at the rates which you inserted in your bill of lading unless, of course, you find the rate is different than you believe is correct; is that correct?

A. Yes, sir.

Q. Now, what has been your experience with reference to the matter of overcharges made by the railroads when such rates were used?

A. We rarely find an overcharge.

Q. Well, can you take any particular year and tell us how many cases you found?

A. Well, if I can take last year, we shipped about 17,000 carloads, and we did not have any overcharge.

Q. And from your experience do overcharges normally come to your attention.

A. All of them.

Q. Now, in the event of a loss or damage in transit, who submits the claim?

A. Pardon me, in that other question, you were speaking about overcharges in rates.

40798 Q. That is right.

A. Yes.

Q. In the event of a loss or damage in transit, who submits the claim to the railroad?

A. The Medusa Company.

Q. And does the Medusa Company submit such a claim on its own behalf or on behalf of the consignee?

A. On our own behalf.

The witness identified Resp. Ex. 3220 A as a Medusa standard form used in connection with lost and damaged shipments filed with the railroads; Resp. Ex. 3220 B as a similar form covering overcharges. Those are the
40799 only forms employed by Medusa for loss and damage in transit and for overcharges. They were used prior to July 2, 1937. He notices on the bottom of this form covered by Resp. Ex. 3220 A that there were a thousand sheets multigraphied on June 15, 1934, and the same information appears on Resp. Ex. 3220 B in the lower left hand corner. Those forms were used since the end of 1934.

(Mr. Withrow hands the documents to Commission's Counsel.)

40800 (RESP. EX. 3220-A and 3220-B was offered and received in evidence.)

By Mr. Withrow:

Q. Mr. Cole, I show you Commission's Exhibit 1110-W, and ask you if the Medusa Company ever used that freight rate book of the Institute.

A. Yes, sir.

Q. I direct your attention to page 136.

A. Yes, sir.

Q. Do you find there the rates from various shipping points to Violet, Ohio?

A. Yes, sir.

Q. Would you tell us what the reference marks in the rate book there refer to? There is an asterisk and
40801 there is a single bar or two cross-bars. Do you see them?

A. Yes, sir. That reference indicates that, in addition

to the rate from some of these headline points, that there will be a per-car charge of $8.10.

Q. Now, as a rate expert, in making a shipment from any of the shipping points indicated that had the $8.10 per-car charge, could you tell us whether or not it is necessary for you or for a person making a shipment to have any additional information about this special charge?

A. No, sir.

Q. Would the size of the car make any difference?

A. No, sir. When it is stated in per-car charge, you can ship any amount; 400 barrels or 132 barrels.

Q. Now, have you ever checked to ascertain what this $8.10 per car amounts to?

A. Yes, sir.

Q. I show you Lake Side & Marblehead Railroad, tariff No. Ohio 329, and ask you if this is the tariff covering shipments to Violet, Ohio.

A. This tariff covers the movement of the shipment from its junction point with its connection to Violet, Ohio.

Q. And would you explain to the Examiner how this charge of $8.10 is arrived at; I mean, what the cargo is?

A. The reason this charge appears in this book as being plussed over the rate from some headline
40802 points, and others that does not show, is because these originating lines do not hold the concurrence of this Lake Side & Marblehead Railroad in order for them to enter into a through rate, and for that reason the rate, cement rate, from, for instance, Ironton, Ohio, 14 cents shown in this book, is plussed $8.10 per car; whereas, from Bay Bridge the rate shown as 6½ without the plussed per car indicates, and it is a fact, that the New York Central, serving our Bay Bridge, Ohio, plant, received the Fx tariff concurrence, from the Lake Side & Marblehead Railroad, permitting them—that is, the New York Central—to publish the joint through rate to Violet; whereas, in the case of Ironton, Ohio, which would be the D. T. & I. Railroad, they fail to secure this concurrence, with the result that there is a per-car charge added by the Lakeside & Marblehead Railroad from its junction point, which represents its earnings to perform the service from the junction point to the point of destination, which in this case is Violet, Ohio.

Q. Now, I call your attention again, Mr. Cole, to Commission's Exhibit 1000, and I would like to direct your

attention to the second page there entitled "Emergency Charges." Now, are you familiar with the emergency charges referred to in that tabulation?

A. Yes.

Q. Are you sufficiently familiar with that emergency charge to tell us whether or not that tabulation is
40803 correct according to the official rail tariffs on file with the I. C. C.?

A. Just glancing at it, I would say that it is correct; that is the figures appear familiar to me.

Q. Mr. J. P. Simpson, of the Interstate Commerce Commission, testified that those emergency charges were incorrect. Would that in any way affect your statement that the charges therein contained are correct?

A. No, sir.

Trial Examiner Norwood: Do you testify they are all correct there?

The Witness: I would say so, Your Honor.

Trial Examiner Norwood: Have you checked them?

The Witness: I have checked them ever since these emergencies started, and that is when they were put in effect, and while they were in effect, and, as I say, these charges as they appear in here are correct, in my estimation.

Mr. Withrow: Will you mark these.

(A book was marked for identification "Respondents' Exhibit 3222," and a document was marked for identification "Respondents' Exhibit 3223.")

The Witness: I might state this is a very simple tabulation, Your Honor. Any rate factor shown here below 14.3 is simply increased 7 percent. For instance, here is the 13-cent rate goes to 13.91. Seven times 13 is 91.
40804 Anything over that is full one cent.

By Mr. Withrow:

Q. Mr. Cole, I show you Respondents' Exhibit 3222, being a book consisting of 85 pages, with two orders at the end, pages 1 and 2, and ask you if this is the emergency charge referred to on page 2 of Commission's Exhibit 1000.

A. Yes, sir.

Q. And I show you Respondents' Exhibit 3223, and ask you if this is a statement prepared in the Medusa Traffic Department's office.

A. Yes, sir. This was prepared under my direction.

Q. You vouch for its accuracy?

A. Yes, sir.

Q. I wonder, Mr. Cole, if you could examine Respondents' Exhibit 3222 and find the part of the order which refers to Portland cement.

A. I notice on page 81, route No. 540, lists cement, hydraulic, natural or Portland, increase of 1 cent per 100 pounds. That is the maximum emergency charge, subject to the provisions in the—as to maximum and minimum. That is where the 7 percent comes in under a certain rate.

Q. And the 7 percent, as I understand it, is the regular rate up to 1 cent?

A. Yes. That is right. The maximum 1 cent is advanced beyond that.

40805 Mr. Withrow: Your Honor, I offer in evidence at this time Respondents' Exhibit 3223 in toto, and Respondents' Exhibit 3222, pages 77, 78, 79, and 81, being the only parts which refer to Portland cement (handing the proffered exhibits to Commission's Counsel).

40806 (RESP. EXS. 3222-A to 3222-E, and 3223 were offered and received in evidence.)

By Mr. Withrow:

Q. Mr. Cole, will you tell us what the difference 40807 is between commodity rates and class rates? Just briefly.

A. The commodity rate is generally lower or substantially lower than class rate, or class rates.

Q. Well, under what circumstances, as far as Portland cement is concerned, does the I. C. C. approve commodity rates?

A. Well, years ago, prior to 1920, cement rates in the Central Territory—that is, cement moved on a relationship to the class rate. That basis, however, was so objectionable that when complaints were filed and the cases heard before the Commission, the Commission devised through various exhibits offered a mileage scale of rates, which they eventually called commodity rates.

Q. Now, are there any instances in the territory where Medusa markets cement where the class rate is lower than the commodity rate?

A. Not to my knowledge.

Q. Well, are there any instances where the class rate is lower than the commodity rate on shipments from any one of your mills?

A. No, sir.

Q. Mr. Cole, as a rate expert do you find that the commodity rates on cement,—that it is difficult to determine what the lowest commodity rate on cement is from the official tariffs?

A. No, I do not find any difficulty.

Q. Now, Mr. Cole, the Institute rate books show rates from your mills to various destinations. Is that of
40808 any value to the Medusa Company?

A. Yes, sir

Q. Does that service by the Institute rate book replace the necessity for the preparation of rate books similar to Respondents' Exhibit 3200-A to D, for identification?

A. Yes, sir

40810 Washington, D. C.
Tuesday, June 11, 1940.

40811 GEORGE W. COLE thereupon resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Withrow.

Q. Mr. Cole, I would like to direct your attention again to your testimony concerning Commission's Exhibit 545-4-L, 4-M, and 4-N, and Respondents' Exhibit 3208 and Respondents' Exhibit 3209. Do you recall your testimony about those documents, generally?

A. Yes, sir.

Q. Now, at record page 40764 you made a statement that the points involved here,—referring to these exhibits,—are non-agency stations, and went on to talk about
40812 the rate depending upon the route, and I would like to have you explain to the Examiner what you meant by your answer in more detail, and, if necessary, I will show you a railroad map of Ohio so that you can explain the rail lines involved.

A. These stations are all on the Pennsylvania Railroad, and the Pennsylvania Railroad, for operating reasons in handling shipments to these local points from Toledo, move the tonnage via Oraville instead of through Lowdenville. At the time we wrote the Institute, the rate clerk in my office either overlooked or did not check with the Pennsylvania as regards this operating condition. Apparently the Institute did, and they called our attention to that fact.

Q. Well, is this instance an exception in any way from your statement that you did not know of any destination in Ohio where different rates applied over different routes?

A. That is correct; this is a rare exception.

Q. And, then, for the sake of the Examiner, is this an exception due to operating conditions on the railroad and not the rate structure?

A. Purely an operating condition.

40813 By Mr. Withrow:

Q. Now, Mr. Cole, we have discussed errors in The Cement Institute freight rate book. Are there times when the official railroad tariffs on file with the I. C. C. contain erroneous rates?

A. Yes.

By Mr. Withrow:

Q. What do you mean by "erroneous rates" in that connection, Mr. Cole?

A. Well, it is a legal rate while it is on file with the Commission—that is, after it is accepted—but we have found occasions where we have checked these rates, and in our opinion they were in error, and we wrote the interested railroad.

Q. Have the railroads under any of these instances you referred to made any changes in the rates?

A. Yes, sir.

40814 The witness identified Resp. Ex. 3224 as having been prepared by the Medusa Traffic Department under his supervision. He can vouch for its accuracy. He used this in testimony before Commissioner Aitchi-
40815 son of the Interstate Commerce Commission in a hearing on ex parte 115, an emergency increase around April 1937. On pages 1 and 3 there is a reference to information from the reports of the Chief Engineer of the United States Army. These are public records. The information as to rates was prepared from official railroad tariffs.

Examination by Trial Examiner Norwood:

All those tariffs are on file with the Interstate Commerce Commission. He has made citations to each rate to enable to check.

40823 (RESP. EX. 3224-A to 3224-Z-18 was offered and
40824 received in evidence.)

40828 By Mr. Withrow:

Q. Mr. Cole, I believe you testified yesterday that one of your duties as traffic manager was securing lower rates for the Medusa Company; is that correct?

A. Yes, sir.

Q. Now, would you tell us whether you have any occasion to follow the rate applications of competing cement manufacturers?

A. Yes, sir.

Q. Would you tell us your reasons for this?

A. The particular reason is to check into the application to see whether or not our competitors are going to receive any advantage in a rate from their respective points of origin to a territory that we might be interested in.

Q. Now, have you ever attempted to get a reduction in rates?

A. Yes, sir.

Q. And under what circumstances have you made such attempt?

A. Well, the circumstances varied. It was generally, however, based on competition by other modes of transportation.

Q. Now, were you with the Sandusky Company at
40829 the time the Interstate Commerce Commission promulgated the 12710 scale?

A. Yes, sir.

Q. And would you just describe briefly how the 12710 scale affected your company?

40830 A. When the Interstate Commerce Commission issued this order, Docket 12710, back in 1923, and the carriers complied with that order, together with permission to put that scale in from the Mississippi River to the entire Central Freight Association territory, which, of course, would include Ohio, the scale of rates to me at that time was generally satisfactory due to the sparsely settled cement mills in the State of Ohio, which at that time were five.

40832 Q. Now, Mr. Cole, you testified there were about five mills in Ohio when the rate scale was adopted in 1923. At that time was there any special volume of trucking in the Central Freight Association Territory?

A. As I recall, that was before the advent of the truck.

Q. Now, did this order 12710 of the Commission apply, —or did the order cover the entire C. F. A. territory?

A. No, sir.

Q. Did the railroads extend it beyond the territory specifically covered by the order?

A. Yes, sir.

Q. And would you describe to the Examiner what territory was covered by the original order, what part of the C. F. A. territory?

A. It covered generally the States of Illinois and Indiana, and the lower part of Wisconsin south of the line of the Milwaukee Railroad, extending directly west from Milwaukee, and included, of course, the west bank points of the Mississippi River.

Q. That was the commission's order.

Now, to what part of the C. F. A. territory was it extended by action of the railroads?

A. It was extended to include ~~the~~ adjacent State of Ohio and that part of Pennsylvania and New York which is on and west of the line of the Baltimore & Ohio Railroad running from Buffalo to Pittsburgh. It was for-
40833 merly known as the Buffalo, Rochester & Pittsburgh Railroad.

The witness identified Resp. Ex. 3230 as "a statement of cement rates predicated on the mileage scale of Docket 12710 up to and including 120 miles as originally prescribed by the Commission. Also on the statement is the original scale plussed under the Interstate Commerce Commission's order in Ex Parte 123." He vouches for the accuracy of the tabulation.

(RESP. EX. 3230 was offered and received in evi-
40834 dence.)

By Mr. Withrow:

Q. Now, Mr. Cole, you testified there were five mills located in Ohio at the time the 12710 scale was adopted. Could you list for us the location of those five mills?

A. Bay Bridge, Ohio; Castalia, Ohio; Ironton, Ohio; Superior, Ohio, and Middlebranch, Ohio.

Q. Now, did the Medusa Company—rather, the Sandusky Company—make any application for reduction in short-haul rates in 1927?

A. It seeems to me that I recall that we did around that time.

Q. I show you Respondents' Exhibit 3231-A to E, and ask you if that refreshes your recollection concerning an

application for short-haul rates in 1927 (handing the documents to the witness).

A. Yes.

40835 Q. Under what circumstances were the requests made for this reduction?

A. There was an application before the Trunk Line Association filed—

Trial Examiner Norwood: You need not give the

40836 details of making that application. Just tell the circumstances that throw some light on it.

A. There was a pending application filed by a competitor. We notified one of the railroads serving our plant at York, Pa., that we were very much interested in this application.

Q. Was this application acted upon, Mr. Cole?

A. Yes, sir.

Q. And did you secure a reduction in short-haul rates?

A. No, sir.

40837 The witness identified Resp. Ex. 3232-A and B as a statement that was prepared in "our" department under his supervision to be used as ready reference in connection with any application that Medusa might have made to any railroad in connection with a reduction in short haul rates. The witness vouches for its accuracy.

Q. Now, under one of the headings it says 114 percent, 12710. In what territory did that scale apply?

A. Trunk Line Territory.

Q. And is that the same territory as you were making the application in 1927?

A. Yes, sir.

Q. Alongside that column there are certain other figures. What do those figures intend to convey?

A. They represent departure from the scale which the railroads put into effect and published to meet truck competition.

Q. And do you recall at what time that departure was made?

40838 A. It is around 1927,—'26 or '27.

Q. Was that publication prior to or subsequent to this application you testified about,—referring to Respondents' Exhibit 3231-A to E?

A. These published rates were in effect at that time.

Q. In other words, you were asking for further reductions in this application of 1927?

A. Yes.

Examination on Voir Dire by Mr. Wooden.

Q. Mr. Cole, what connection, if any, does this Respondents' Exhibit 3232-A and B have with Respondents' Exhibit 3231, for identification?

A. What is 3231?

Q. The one that just preceded this, the application for a reduction of short-haul rates in 1927.

A. Well, as I testified in connection with this docket here that I hold in my hand, 3232-A, this was gotten up in the office years ago as a reference to which we could refer readily in the event that we made an application for
40839 a reduction in any of the territories shown under this scale.

Q. Did you use it in connection with an application you made for a reduction in short-haul rates in 1927?

A. We simply pointed out in the letter—

Q. Is your answer "No"?

A. I can't answer it "No" in that respect. I had to give reference to the scale that was then in effect, which was the 114 percent of the 12710.

Q. Well, did you make application for a reduction in short-haul rates in 1927?

A. Yes, sir.

Q. To whom?

A. The application was made to the Western Maryland Railroad.

Q. It is not the same application that Respondents' Exhibit 3231-A to E was?

A. No, sir.

Q. That was a competitor's application?

A. Yes, sir.

40840 (RESP. EX. 3232-A and 3232-B was offered and received in evidence.)

By Mr. Withrow:

Q. Now, Mr. Cole, we were talking about 1927 when we recessed. Did you make an application for short-haul rates in 1929?

40841 A. Yes, sir.

Q. And were you successful in securing short-haul rates at that time?

A. As I recall, we were successful.

Q. And for what plant or plants was this application made?

A. York, Pa.

Q. And under what circumstances was this application made?

A. As I recall, there was quite a large contract of cement, and the contractor was moving some of his aggregate by truck, and the railroads were after the cement by rail, and information came to me that there was a trucking rate lower than the then existing rail rate, and with this information I made an application to the Western Maryland Railroad, which served the York, Pa., plant.

Q. Mr. Cole, I show you Respondents' Exhibits 3233 and 3234-A and B, and ask you to tell us what each of them is.

A. These are letters from traffic officials of railroads operating in Wisconsin, written in 1930.

Q. Did you receive those letters?

A. Yes, sir.

40842 Q. Under what circumstances or concerning what incident were those letters received?

A. They were in reply to letters that I had written to these railroad officials.

Q. Well, Mr. Cole, would you tell us where or not in 1930 you made an application for reduction in short-haul rates in your Wisconsin territory?

A. Yes, sir.

Q. And were these two documents which you hold in your hand received in connection with your applica-
40843 tion for such short-haul rates?

A. Yes, sir.

40846 Q. Mr. Cole, what was the result of this application which you made to the C. & N. W. and the Green Bay & Western Railroads?

A. It failed of adoption.

Q. Now, did you make an attempt to secure a reduction in the short-haul rates in the Western Trunk Line and Central Freight Association territories in 1931 and 1932?

A. Yes, sir.

Q. Now, when the 12710 scale was adopted, Mr. Cole, up to what mileage did the Commission fix rates on cement?

A. Seven hundred miles.

Q. And in your experience as a traffic and rate expert, will you tell us whether or not the 12710 scale benefited any special class of shippers?

A. Yes, sir. It—

40847 Q. Well, what class did it benefit, Mr. Cole?
A. The long haul shipper.
Trial Examiner Norwood: Well, did you combat that?
The Witness: Sir?
Trial Examiner Norwood: Did you oppose that?
The Witness: As I stated previously, when the scale was put in, particularly in Ohio, we were a long-haul shipper, and we favored the scale. That was before the State became cluttered up with cement plants.
40848 Mr. Withrow: Well, up until the time of this case I always thought that applications for reductions in rates were perfectly legal, but a great mass of
40849 documents were offered and received in this case on the theory that the activities of this witness in attempting to secure reductions in rates was illegal, and was a conspiracy in violation of the anti-trust laws, and for that reason it is incumbent upon us in the presentation of our case to present the background,—the situation in the territory where the application was made, how the rate scale became outmoded, the reasons for the action taken by this Respondent which have been put in issue in this proceeding.
Mr. Wooden: Your Honor, the only channel by which this subject can be approached is that in 1931 and 1932 this witness headed a movement among competitors represented in the Institute, of which Mr. MacFarland, the president of his company, was president, to eliminate trucking and eliminate it by cooperation with the organized dealers and cooperation with the organized railroads, and this lowering of the short-haul rail rates was simply a part that was expected of the railroads in return for the Respondents' elimination of trucking and restoring the business to the rails.
40850 Q. Now, at the time in 1931, were any hearings before the I. C. C. or one of its masters, or examiners, necessary in order to change the 12710 rate scale in Ohio and Western Pennsylvania?
A. No, sir.
Q. And would you tell us why?
A. Well, briefly, there was no order running against those rates in the territory you just mentioned. They were voluntarily put in by the railroads.
40851 Q. And who had authority to change the rates then?

A. The railroads.

Q. Now, did this matter of revision of short-haul rates under the 12710 scale first come up before trucking became prevalent in Ohio, or at the same time, or after trucking became prevalent?

A. As I recall, it developed around 1929 or 1930.

Q. And would you tell us whether or not the—

Trial Examiner Norwood: Well, was it before or after?

The Witness: As I recall, Your Honor, there was trucking about that time.

By Mr. Withrow:

Q. Well, what brought about your company's interest in the revision in short-haul rates in 1931, Mr. Cole?

A. Well, I became interested in trying to secure reductions back in 1927 and 1928; that is, the thought came to my mind at that time when these new plants were started in the State.

Q. Now, do you recall, Mr. Cole, the so-called 15 percent rate case in 1931?

A. Yes, sir.

40852 Q. And I show you Respondents' Exhibit 3236, which is a printed pamphlet with pages numbered from page 539 to page 590, inclusive, and ask you if that is the 15 percent rate you referred to?

A. Yes, sir. This is the decision in that case by the Interstate Commerce Commission.

Q. What were the circumstances surrounding that 15 percent rate case in 1931?

A. This was a case wherein all the railroads in the United States declared to the Interstate Commerce Commission that an emergency existed in that they were badly in need of revenue. Upon these representations by the carriers the Interstate Commerce Commission on its own motion, or the Interstate Commerce Commission set about to have an ex parte hearing.

By Mr. Withrow:

Q. Well, did they allow an increase in rates at that time?

A. Yes, sir.

Q. And what effect, if any, did that 15 percent rate case have on the question of reduction in short-haul rates?

A. Well, in my particular case—that is, in so far as the Medusa Cement Company was concerned—it permitted me

to point out to the railroads that with this added
40853 increase the short haul, or the rates to short-haul points, the then existing rates to short-haul points, were mere paper rates, and by that I mean that there was no tonnage moving on them.

Trial Examiner Norwood: Did that emergency rate increase the short-haul rates proportionately?

The Witness: Yes, sir. It increased all the rates, which would include rates to short-haul points. There were no short-haul rates—so-called short-haul rates—in effect at that time, your honor. The scale was in effect.

By Mr. Withrow:

Q. It increased the entire 12710 scale?

A. Yes, sir.

40858 By Mr. Withrow:

Q. Mr. Cole, in connection with your activity in an attempt to secure reduction in short-haul rates, would you tell us whether or not you took into consideration the statements made by the Interstate Commerce Com-
40859 mission concerning motor truck competition with the railroads, as contained in the 15 percent case, Ex Parte 103?

A. You mean in my negotiations with the railroads?

Q. That is right.

A. Yes, sir.

Q. And did you take that into consideration, that opinion, at or about the time your request for and work on the short-haul rate matter began?

A. Yes, sir.

40860 Q. Mr. Cole, are you familiar with the Railway Business Association?

A. Yes, sir.

Q. And were you familiar with its activities in the spring and summer of 1931?

A. Yes, sir.

Q. And will you describe what activities they en-
40861 gaged in at that time?

A. The Railway Business Association at that time was engaged in a publicity effort to help the railroads regain some of their tonnages that had been lost to truck competition.

Q. Did you or the Medusa Company have anything to do with organizing this compaign, Mr. Cole?

A. No, sir.

40864 The witness identified Resp. Ex. 3238 as a letter, dated April 29, 1931, which he received from General Freight Agent Miller, of the Pennsylvania Railroad; Resp. Ex. 3239 as a letter, dated May 4, 1931, written by E. G. Clark, freight traffic manager of the Soo Line 40865 Railroad which he received; Resp. Ex. 3240 as a letter, dated May 6, which he addressed to Mr. G. P. Schwaab, sales manager of the Manitowoc Portland Cement Company, Manitowoc, Wisconsin; Resp. Ex. 3241 as a letter, dated May 19, 1931, addressed to the witness which he received from E. G. Clark, freight traffic manager of the Soo Line; Resp. Ex. 3242 as a letter he addressed, dated May 22nd, to E. G. Clark of the Soo Line Railroad; Resp. Ex. 3243 as a letter, dated April 4, 1931, addressed to him by R. P. Paterson, freight traffic manager, Pere Marquette Railroad, which he received. Those were received or sent in the regular course of doing business.

Q. And can you tell us generally under what circumstances these letters were received or sent, covering it in one statement?

A. I do not know whether I can cover them in a general statement, unless I sort of sectionize it somewhat, because this one letter from Mr. Miller refers to my activities in writing a letter to our employees, and also to our mill people, calling their attention to the plight of the railroads.

40866 These other letters from Mr. Clark cover a discovery he made that he was losing quite a bit of cement tonnage in Wisconsin; wanted to know—

Q. Well, will you tell us, with the exceptions of that first document, Mr. Miller, whether these were the first letters which you received from the railroads raising the question of short-haul rates?

A. That is correct; yes.

Q. And would you tell us who initiated the correspondence, whether you did or the railroads?

A. The railroads.

40867 Q. Were you, Mr. Cole, interested in the suggestions made by the railroads with reference to reductions in rates to meet motor truck competition?

A. Yes, sir.

Q. And would you tell us your reasons for being interested in their suggestions?

A. My reason was based upon—naturally, my reason was based upon the interest that the railroads had shown in this rate problem that I had before me, and I felt that it would be of some assistance to me in negotiating with the railroads to have this as a background which would perhaps be of some assistance in securing this reduction in the cement rates to short-haul points.

Q. Well, now, these letters, Mr. Cole, were from 40868 persons connected with the Soo Line, I believe. Was there ever a meeting held in 1931 or 1932 with the railroads in Western Trunk Line territory?

A. Not that I recall. At least, I never attended any meeting.

(RESP: EXS. 3239, 3240, 3241, 3242, and 3243 were offered and received in evidence.)

By Mr. Withrow:

Q. I believe you testified that around 1927 and 1928 you became of the opinion that the 12710 scale was inequitable, was not a good scale for the territory at that time.

A. Yes, sir; particularly Ohio.

Q. And will you explain to us what revisions in that scale you thought were desirable from your standpoint?

A. I thought the scale should be revised up to about 50 miles, or so, starting at a rate that, in five-mile blocks, would blend into the scale itself at 50 miles to avoid any hump in the scale.

Q. And what effect would this new scale have on the Medusa Company?

A. It would have had this effect, that there would 40869 have been a saving in cost to the company.

Q. You testified earlier that the 12710 scale favored the long-haul shipper. What effect would this revision that you had in mind have upon the long-haul shipper?

A. It would diminish localizing our immediate markets; that is, markets around our natural markets.

Q. Would this be of any benefit to the Medusa Company?

A. Yes, sir.

Q. In what way?

A. Well, in the first place, any reduction in rate, a shipping rate, is naturally a saving to the company, and it

would place us in position to take care of our natural market, both by truck and by rail at reasonable rates.

Q. And did you discuss this proposition with the railroads?

A. Yes, I did.

Q. And did you address your attention to the Central Freight Association?

A. Yes, sir.

Q. And who made the initial move,—the individ-
40870 ual railroads or the Central Freight Association, if you recall?

A. The railroads, as I recall, both by letters and by verbal conversations with me, were much concerned about the situation, and they suggested that the quickest way to solve it,—the problem,—would be to take the matter up with the Central Freight Association.

Q. And did you take it up with the Central Freight Association?

A. Yes, sir.

Q. And what was the basis of your argument to the Central Freight Association about this 127½0 scale?

A. I pointed out to the Central Freight Association that the scale in and of itself, in so far as Ohio was concerned, was not adaptable under the then present conditions, and I supported that argument, with, I believe—I am not quite sure—but I believe a map showing a 50-mile zone in 10-mile blocks around each mill in Ohio at that time, which was in further support of my suggestion that they revise their rates downward up to 50 miles, to regain some of the tonnage that they had lost to truck competition.

By Mr. Withrow:

Q. Now, after taking this matter up with the Cen-
40871 tral Freight Association, were other cement shippers contacted?

A. Yes, sir.

Q. And at whose suggestion were they contacted?

A. The railroads.

Q. Did the railroads contact these shippers first, or did you, Mr. Cole,—do you recall?

A. I do not know who made the initial calls, or wrote the letters, but, as I remember, the railroads were calling on most every interested shipper.

Q. Well, can you tell us whether or not it was necessary to call this to the attention of the other shippers in Ohio?

A. Yes, sir; it was.

Q. And would you tell us why?

A. The reason it was necessary was because the railroads on this particular scale of rates would not make any change from any cement-producing point because the same yardstick was used in measuring the rates from these
40872 producing points to all the destinations, and, therefore, any change or suggested change would have to be before this railroad committee, and the interested shippers would have to express their opinion as to whether or not they were in favor of making any particular change.

By Mr. Withrow:

Q. Now, was any meeting called between the carriers and the interested shippers?

A. Yes, sir.

40876 Q. Mr. Cole, when we adjourned for the noon recess I was asking you about the procedure following the incident in 1931 and 1932 where you were attempting to get reductions in short-haul rates. Would you tell us whether or not the railroads had followed the same procedure of calling interested railroads and interested shippers together, in other instances of rate changes?

40877 A. That is the usual practice, and it has been in effect for years and years.

By Mr. Withrow:

Q. Mr. Cole, could you tell us whether or not, to your knowledge, that procedure has ever been approved by the Interstate Commerce Commission?

Mr. Wooden: The same objection.

Trial Examiner Norwood: The objection is sustained.

40878 Mr. Withrow: I want to note a specific exception, and I will ask Your Honor, and the Federal Trade Commission, to take judicial notice of the thirty-ninth annual report of the Interstate Commerce Commission, and, more specifically, pages 42 and 43, and other places throughout the report, where the Interstate Commerce Commission approves this method of procedure, and I offer to prove through this witness, both through oral testimony and documents, which I am not having marked pursuant to Your Honor's direction when we are foreclosed from a line of inquiry that we should not have documents marked,

and to which practice we have already noted our exception, I offer to prove that the federal and State regulating bodies which regulate rates, railroad rates, have specifically stated that they approve of this procedure, have from time to time taken action which encouraged
40879 shippers and carriers to have joint conferences for the purpose of arriving at a result so that only one application was forwarded to the Commission; that these Commissions also have requested both carriers and shippers to settle their problems without the bringing of a formal complaint through those bodies wherever that is possible, and have taken all steps they can to discourage the filing of those complaints, and it has been the experience of this witness that shippers have been requested to withdraw complaints so filed and have the matter settled between the carrier and the shipper outside of the formal proceeding.

40880 Q. Mr. Cole, from your dealings with the railroads and railroad freight associations like the Central Freight Association prior to 1931, would you tell us what your experience has been with reference to whether or not they gave notice to all shippers in the territory where any rate matter was being taken up for discussion?

A. Yes, sir; that applied not only on cement but to most every commodity such as lumber and coal, lime, brick.

By Mr. Withrow:

Q. And when the railroads suggested that the other shippers be brought into this, did you object on behalf of the Medusa Company, or what stand did you take with reference to that matter?

A. I had no objection to the other interested shippers attending the meeting.

Q. And from your experience could you have secured a reduction in rates from the railroads without they giving notice to the other affected shippers?

A. No, sir.

Q. Now, you have testified, I believe this morning,
40881 as to your reasons why you were interested in this application from the point of view of the Medusa Company. When you discussed this matter with the railroads what position or what statement of your position did you make to them?

A. My statement to the railroad was in substance that I knew that there was trucking throughout Ohio, and also

from our mills. It was, with us, it was to our company a competition that we had to meet. It was unregulated trucking, and I was not concerned with this trucking except that it did give me some advantage in that I could inform the railroads that they had this competition, and I thought that it would be helpful to my company by bringing that to the railroads' attention that they were faced with this competition.

40883 Q. Mr. Cole, was there any discussion in the Medusa Company of this subject of securing reduced short-haul rates before you approached any of the railroads—I mean, before you discussed this matter with the railroads?

A. Yes, sir.

Q. And what position did the Medusa Company take at that time with reference to the reduction of short-haul rates?

A. The position we took was that it would be to our interest to negotiate with the railroads for a reduction.

Q. Well, in connection with those discussions, would you tell us whether or not at that time these negotiations were undertaken for the purpose of eliminating trucking?

A. No, sir. That was not on my mind at any time.

Q. Now, did any of these activities which you took with the railroads, were they connected in any way with any activities by Mr. W. W. Campbell, as far as you know?

A. As far as I know, they were not.

Q. Or Mr. Holway?

A. No, sir.

40884 Q. Well, did Mr. MacFarland ask you to undertake this activity for the purpose of eliminating trucking?

A. No, sir.

Mr. Wooden: I object as calling for a conclusion as to what Mr. MacFarland's purpose was.

Mr. Withrow: I did not ask him what Mr. MacFarland's purpose was.

Trial Examiner Norwood: The objection is sustained.

By Mr. Withrow:

Q. Did he ever ask you to undertake any negotiations with the railroads about short-haul rates?

A. No, sir.

Q. Mr. Cole, I will show you Commission's Exhibit 1043-J, which purports to be a letter written by you, and ask you if you recall that letter?

40885 A. Yes, sir; I recall receiving this letter.

Q. Did you say "receiving"?

A. I mean sending this letter, or writing this letter, rather.

Q. Do you recall what the contents of the letter were from Mr. Early, which you returned to him?

A. Yes. I recall it.

40887 Q. Mr. Cole, I show you Respondents' Exhibit 3245, and ask you whether or not that is a copy which was prepared in your office of that letter of Mr. Early's, referred to in Commission's Exhibit 1043-J?

40888 A. This exhibit, Respondents' Exhibit 3245, is a copy of the letter that I referred to in the first paragraph of my letter of May 25, and Commission's Exhibit 1043-J.

Q. And was that a copy made for your files at the time you returned the original letter?

A. Yes, sir.

(RESP. EX. 3245, was offered and received in evidence.)

40889 Q. Mr. Cole, I direct your attention again to Commission's Exhibit 1043-J. What is that special committee referred to in the third paragraph?

A. It was a committee of the Central Freight Association, which was formed to study the problem of short-haul rates on cement to meet truck competition.

Q. Is that the same one as is referred to in Mr. Early's letter to you which has since been received into evidence?

A. Yes, sir.

Q. Now, in Commission's Exhibit 1043-J, you suggested having the C.F.A. carriers and the cement companies discuss this matter. What did you have in mind when you made that suggestion?

A. Well, in Mr. Early's inquiry, he speaks of trucking distance, and the approximate amount of tonnage that was moving at that time by truck, and naturally I figured that the only one way that this could be accumulated (accomplished) was by taking it up with the individual mills or companies, and it was for that reason that I suggested to Mr. O'Boyle in my letter of May 25 that he advise Mr. Early that I was sending a copy of this letter to the various or several cement companies, and it will be noted particularly here that the companies that I mentioned, with

the exception of the Universal Company, had plants in Ohio.

40890 Q. Did you have anything to do, Mr. Cole, with the formation of this special committee of the Central Freight Association?

A. No, sir. That is strictly a railroad matter.

Q. Well, had you suggested that such a committee be appointed, or was that done by the railroads?

A. That was done by the railroads.

Q. Now, when you suggested that other cement shippers be contacted, had any railroad executives suggested that to you prior to your letters to Mr. O'Boyle—that is, Commission's Exhibit 1043?

A. Oh, yes. There had been continual requests for some time.

Q. Would you tell us, if you know, why Mr. Early directed his inquiry to the Medusa Company?

A. Mr. Early's railroad, the Wabash, served one of our plants indirectly at Toledo, Ohio.

Q. Now, Commission's Exhibit 1043-J, shows that you sent this letter to a number of the traffic managers of various companies. Would you tell us why you sent a copy of your letter to Mr. O'Boyle to them?

A. This letter from Mr. Early was received through the office of Mr. O'Boyle, who is his general agent at Cleveland. I might say in this connection that the reason that Mr. O'Boyle's name does not appear on the exhibit, Respondents' Exhibit 3245, is that he is the general agent, and his division freight agent's name, A. L. Gilbert;

40891 is one of the names appearing in the caption of the letter, and Mr. O'Boyle reports to Mr. Gilbert.

Q. I do not think you quite understood my question, Mr. Cole. I wanted to know what your reason was for sending copies of your letter to Mr. O'Boyle to the other cement companies listed at the bottom of Commission's Exhibit 1043-J?

A. I did that for the reason that the information asked for by Mr. Early could not be received from one company, and I knew that particular companies I mentioned were interested in the question of reduction in short-haul rates. It was really a short cut to obtaining this information for the special committee.

Q. At the time that you wrote that letter, Mr. Cole, had

you known about the activities of this committee of the C.F.A. concerning reductions in short-haul rates?

A. No, because that committee had just been formed or appointed.

40892 The witness identified Resp. Ex. 3246 as an inter-
office communication of the Medusa Company, which he received; Resp. Ex. 3247 as a letter received by Medusa from the New York Central. Those were received or came to the witness's attention in the regular course of busi-
ness.

40893 (RESP. EXS. 3246 and 3247, were offered and
40894 received in evidence.)

40895 By Mr. Withrow:

Q. Mr. Cole, I show you Respondents' Exhibit 3248, and ask you to tell us what it is.

A. This is a letter dated June 15, 1931, which I wrote to Mr. E. L. Whitney, freight traffic manager of the New York Central Railroad at Chicago, concerning cement rates.

Q. Is that an application made by you for short-haul rates from Bay Bridge to Ohio points?

A. The letter is part of some correspondence that we had with Mr. Whitney prior to this letter, and it does represent a request on our part for a reduction in the cement rates from Bay Ridge to Cleveland to meet truck competition.

40896 (RESP. EX. 3248, was offered and received in
evidence.)

By Mr. Withrow:

Q. Mr. Cole, I show you Commission's Exhibit 1043-M. Do you recall that letter?

A. Yes, sir.

Q. And what was the data with respect to the trucking of cement requested by Mr. Early,—is that the data described in that letter we received here this afternoon?

A. Yes, sir; in his letter dated May 15.

Q. And those companies that are listed there in that exhibit are the companies whose mills are located in the C.F.A. territory?

A. Yes, sir.

Q. Now, were you advised by the Wabash Railroad Company that the carriers were considering a reduction in short-haul rates?

A. Yes, sir.

40897 The witness identified Resp. Ex. 3249 and Resp. Ex. 3250 as letters which he received in the regular course of business.

(RESP. EXS. 3249 and 3250, were offered and received in evidence.)

40898 Q. Mr. Cole, I show you Respondents' Exhibit 3251, and ask you if that is a pencil memorandum from the traffic department of the Medusa Company?

A. Yes.

Q. In whose handwriting is that?

A. That is my handwriting.

Q. And under what circumstances was that memorandum prepared?

A. As I recall, I wanted this information as to the docket number to cover the meeting of the special committee which I referred to a few moments ago. I simply wrote this out as a memorandum.

Q. Mr. Cole, did the C.F.A. have a formal docket on this matter of reductions in short-haul rates in 1931?

A. Yes, sir.

Q. And, to your knowledge, did the carriers as a part of the C.F.A. have meetings amongst themselves to discuss this matter of short-haul rate reductions?

A. Yes, sir.

40899 Q. Mr. Cole, I show you Commission's Exhibit 1144, and ask you if that letter ever came to your attention before the complaint was filed in this case?

A. No, sir.

Q. Now, the letter refers to a telephone call from J. H. Day, of the Nickleplate to you on or about the 3d of August. Do you recall a telephone conversation with Mr. Day?

Mr. MacIntyre: Just a moment. The letter is not one written by the witness. It is an improper examination, and objected to for that reason. It is suggestive and leading.

Trial Examiner Norwood: What did you have to do with that paper?

The Witness: It is the first time I ever saw it.

40900 Q. Mr. Cole, have you answered my question as to whether or not you recall a conversation with Mr. Day on or about that time—that is August 3, 1931?

resenting a study that he made of the present cement
40904 scale and what he considers to be the proposed scale together with existing truck rates. The same applies to Resp. Ex. 3253 and Resp. Ex. 3254. The witness identifies Resp. Ex. 3255 A as a letter which he prepared, setting forth Medusa's proposal for the reduction of short haul rates. The witness prepared the tabulation which appears as Resp. Ex. 3255 B.

Examination by Trial Examiner Norwood.

That is the proposal for reduction of short haul rates, together with his working sheets and how he arrived
40905 at those rates. That is how he worked out the 50-mile plan.

Voir Dire Examination by Mr. Wooden.

Resp. Ex. 3255 was a ditto letter, taken on a ditto machine intended for traffic representatives of cement companies in the Central Freight Association Territory and it was sent out to them.

40908 (RESP. EX. 3252-A, 3252-B, 3253, 3254, 3255-A,
40909 and 3255-B, were offered and received in evidence.)

By Mr. Withrow:

Q. Now, Mr. Cole, I show you Respondents' Exhibit 3255-E and F, and ask you if they are letters sent by you to the Pere Marquette Railroad and the letter which you received in reply?

A. Yes, sir.

40910 Q. And did you continue your effort to secure lower short haul rates after the letters there that you have in your hand?

A. Yes, sir.

(RESP. EX. 3255-E and 3255-F, was offered and received in evidence.)

By Mr. Withrow:

Q. Mr. Cole, I show you Commission's Exhibit 1765-A and B, and ask you if you recall that letter.

Trial Examiner Norwood: Is that a letter from the witness or to the witness?

Mr. Withrow: It is from the witness, I assume, if he says so.

A. Yes, sir; I recall writing this letter.

Q. That refers to a conference in New York. Was
40911 Mr. MacFarland present at that conference?

A. No, sir.

Q. Would you tell us under what circumstances you wrote that letter and what you had in mind, and what you were trying to convey to Mr. Collyer, and your reasons for so doing?

A. Mr. Collyer was chairman of the traffic executives association of the Eastern Lines, and I took the very short cut to acquaint him with a proposal that I had intended to submit to the C.F.A., and I thought quick action could be had if he would instruct the officials that report to him in connection with this.

By Mr. Withrow:

Q. Now, in the first paragraph it refers to a conference with some traffic managers of other cement companies. Do you recall that conference?

A. Yes, sir.

Q. And who, if you can recall, was present?

A. Mr. Gubernator, Mr. Collister,—Mr. Collister was at that time alive, and he was assistant traffic manager of the Universal-Atlas Company stationed in New York.

Q. Well, did Mr. Gubernator favor this proposed short haul rate reduction?

A. No, sir.

40912 Q. And what was the reaction of Mr. Collister, if you recall?

A. Mr. Collister took the same view that Mr. Gubernator did.

Q. Did you continue your efforts to secure short-haul rates even though these traffic managers of these two companies opposed reduction in short-haul rates?

A. Yes, sir; I did.

Q. Would you tell us whether at this meeting referred to in Commission's Exhibit 1765 the question of discontinuing trucking was discussed?

A. No, sir; it was not.

Q. Now, I would like to direct your attention to the third paragraph of that letter. Do you find it there?

A. Yes, sir.

Q. Where you referred to a meeting held by eastern railroad executives and National Builders' Supply Associa-

tions and manufacturers. Do you recall what manufacturers you had in mind at the time you wrote that letter?

A. The Medusa Company and the Manitowoc Portland Cement Company, as I recall.

Q. And who represented those?

A. Mr. MacFarland.

Q. Did you attend that meeting?

A. No, sir. As a matter of fact, I did not know anything about that meeting.

40913 Q. Mr. Cole, is the fourth paragraph you referred to an adjustment in short-haul rates to meet truck competition. Would you tell us if you can recall where that phrase, "reduction" or "adjustment of short-haul rates to meet truck competition" originated in connection with this activity of yours?

A. It is a figure of speech that is common amongst traffic managers in any rate adjustment, that is
40914 means generally a downward trend of rates, and for the lack of a better word or words which might have come to my mind at the time I wrote this letter,—I was writing to a railroad man, and it was just railroad language.

By Mr. Withrow:

Q. Now, this document refers to the fact that there might be a meeting between representatives of the shippers and of the carriers. Did such meeting ever take place?

A. Yes, sir.

Q. And where was that meeting held?

A. It was held in Chicago.

Q. Is that the meeting concerning which there is some evidence in the record that it was around 1932?

A. Yes, sir.

Q. Now, in the fifth paragraph there is a term which I would like you to explain. You state there that there is no grouping of origins in the C. F. A. territory. Would you explain to the Examiner what you meant by that?

A. I had in mind in using that language that in the East,—particularly in the so-called Lehigh district,—there is a grouping of origins of some 18 or 20 cement plants with a common rate, and I simply pointed out that in the C. F. A. territory no such conditions exist.

Q. And this grouping of origins, would you tell us whether or not that was the result of an order entered by the I. C. C.?

40915 A. Yes, sir.

Q. Now, in the next to the last paragraph you state that you would have no objection to W. W. Campbell attending this meeting in Chicago. Did you invite Mr. Campbell to attend the meeting?

A. No, sir.

Q. To your knowledge, did anyone invite him?

A. No, sir.

Q. Did he attend?

A. No, sir.

Q. Would you tell us whether or not you ever discussed any of these matters with W. W. Campbell?

A. I have never met the gentleman.

Q. Now, in this activity of yours with reference to reduction in short-haul rates, was this work being done under Mr. MacFarland's supervision?

A. No, sir.

Q. Was it being done at his suggestion?

A. No, sir.

Q. Now, you refer to a meeting—I show you Commission's Exhibit 1644-A and B, and ask you if the meeting you refer to is the one described in the first paragraph of that letter?

A. Yes, sir.

40918 Q. Mr. Cole, I show you Commission's Exhibit
40919 1743-A and B, and ask you if you recall that letter?

A. I recall writing this letter.

Q. That letter refers, I believe, to a circular letter of January 29th?

A. Yes, sir.

Q. And I show you Respondents' Exhibit 3255-A and B, and ask you if that is the circular letter referred to?

A. Yes, sir. That is the letter referred to in my letter of February 19th.

Q. Mr. Cole, I show you Respondents' Exhibit 3257. Is that a letter which you received?

A. Yes, sir.

Q. Is that the letter to which you replied, which has been received here as Commission's Exhibit 1743?

A. Yes, sir; it is.

40920 (RESP. EX. 3257, was offered and received in evidence.)

By Mr. Withrow:

Q. Mr. Cole, would you look at Commission's Exhibit 1743.

A. Yes, sir.

Q. Do you see there the third paragraph where you state that the situation of two companies—

A. Yes, sir.

Q. Do you recall those two companies,—who those two companies were?

40921 A. No, sir; I do not.

Q. Now, there was a meeting of January 7, 1932, refered to in that document, I believe, in the fourth paragraph. Did you attend that meeting?

A. No, sir.

Q. Do you know who called that meeting of January 7, 1932?

A. I understand the railroads did.

Mr. Wooden: I move to strike the witness' statement of what he understands.

Trial Examiner Norwood: Do you know who called that meeting?

The Witness: Yes, sir.

Trial Examiner Norwood: Who called it?

The Witness: The railroads.

40922 Q. Mr. Cole, I show you Respondents' Exhibits 3258, and ask you to tell us what it is.

A. This is a statement showing the—or as the result of a study I made showing the average trucking rates, particularly in Ohio, together with the present scale; that is, the scale in effect on January 4, 1932. Also the rates plussed under Ex Parte 103, and the suggested rail rate to meet truck competition, together with a graph extending up to 340 miles in the cement rates stated in cents per ton-mile.

Q. And did you prepare this to be submitted to the railroads?

A. Yes, sir.

Q. Now, I show you Respondents' Exhibit 3259-A,
40923 B, C, and D, and ask you if you prepared that information for submission to the railroads?

A. Yes, sir.

Q. Now, would you look at "C" and "D", are they the original figuring which you then transposed to Respondents' Exhibit 3258?

A. Yes, sir.

40924 Trial Examiner Norwood: Respondents' Exhibits 3258 and 3259-A and B are rejected.

By Mr. Withrow:

Q. Mr. Cole, I show you Commission's Exhibit 473. Do you recall receiving that letter?

A. Yes, sir.

40925 Q. Did you receive that letter in March of 1931, Mr. Cole?

A. No, sir.

Q. When did you receive it?

A. March, 1932.

Q. Now, this letter in the first paragraph refers to a telephone conversation. Do you recall the substance,

40926 Mr. Cole, of that conversation?

A. Yes, sir. I called him up—I called Mr. Tuttle, because he had failed to answer my letter, that is the circular letter that I sent to various traffic managers of the cement companies.

Q. And did he say whether or not he would attend the meeting in April, 1932?

A. At that time he simply said he was pretty busy and that he would answer the letter as soon as possible.

Q. Could the railroads of their own free will have changed the rates on cement from the Marquette mills at Cape Girardeau or LaSalle?

A. They could not, because there was an order

40927 running against those rates at that time issued by the Interstate Commerce Commission.

40932 Washington, D. C.,
Wednesday, June 12, 1940.

40933 GEORGE W. COLE thereupon resumed the stand and testified further as follows:

Direct Examination by Mr. Withrow (Continued).

Q. Mr. Cole, I would like to direct your attention to record page 40758, line 2, and ask you if the Reporter has correctly transcribed your statement there,—your answer to my question starting in line 2, and, if not, how it should read?

A. It is not stated exactly correct.

Q. Well, would you make a statement? Would you read it so that it would be correct?

A. The answer should read, "We are on the mailing list of all the carriers, not only the ones serving our
40934 plant, but the carriers that participate in the rates from our mills."

Q. Now, would you look at record page 40801, line 13, and tell us whether of not the Reporter has made any errors in getting down your answer to that question?

A. My answer should read "No, sir. When it is stated in per car charge, you can skip any amount, 400 barrels or 132 barrels."

Q. Now, would you look at the next page, 40802, in line 8, and tell us whether or not that is correct, the answer is properly transcribed?

A. It should read, starting the word "received" on that line, "received the FX"—that is "FX," eliminate the word "from," and in the next line eliminate the word "concurrence." It would then read, "received the FX tariff concurrence."

Q. Mr. Cole, when we adjourned yesterday we were directing your attention to Commission's Exhibit 1743-A and B, and I would like to direct your attention to the first full paragraph on the second page, that is, Commission's Exhibit 1743-B, and tell us what you had in mind when you were referring to the cement companies cooperating "in a way that you are familiar with"?

A. At that particular time there was quite a bit of agitation by the various shippers of all kinds of commodities, and the receivers of these commodities, as well as the railroads, to bring about better legislation, or, I
40935 should say, better regulation of trucking, particularly in the State of Ohio.

Q. Now, yesterday we talked about—asked you a few questions about your conversation with Mr. Day, of the Nickelplate Railroad. Do you have any recollection now of discussing the question of short-haul rate revision with Mr. Day?

A. Yes, sir. I discussed that matter with him a great many times. His office is just across the street from ours, and he either calls on me or I call on him a couple times a month, and that has been going on for years, and I do recall his and my conversation in connection with trucking, and—

Q. Well, would you give us—

A. —and he wanted to know how this trucking could be

either eliminated or they could get back some of the business, and I told him that our people were simply meeting a competitive situation, we were not satisfied, due to our inability to serve the trucks we were not in a favorable position, because we did not have the proper facilities, but we either had to meet that competition or forego the business, and, as I understood it from our management, they thought they should continue to meet the competition.

Q. Mr. Cole, I show you this letter addressed to Mr. Kanengeiser, Commission's Exhibit 1701-A and B, and ask you if you recall that letter?

A. Yes. I recall writing this letter to Mr. Kanengeiser.

40936 The witness identified Resp. Ex. 3261 and Resp. Ex. 3262 as letters which he received from the Wellston Iron and Furnace Company; Resp. Ex. 3262 as a letter to which Com. Ex. 1701 A and B is in reply.

40939 (RESP. EXS. 3261 and 3262, were offered and received in evidence.)

By Mr. Withrow:

Q. Now, would you tell us, Mr. Cole, if you can recall, your purpose or reason for writing Commission's Exhibit 1701-A and B?

A. As I recall, Mr. Withrow, this letter of mine, dated March 28th, addressed to Mr. Kanangeiser, was in reply to a letter he had written to me several days previous to that date, and he seemed to, as I remember, object to the suggested basis of mine, and I was merely pointing out to him in here that he would receive the benefit under this plan.

Q. Now, throughout the letter—for instance, in the third paragraph—you make some statements there about possible effect which might arise if short-haul rates

40940 were reduced. Would you tell us what the basis was for your statements contained in the letter?

A. These were simply thoughts that came to my mind at the time. I was trying to sell the gentleman on an idea that he would be benefited under the proposal—that is, the reduced rate. It was just a sales promotion on my part of an idea.

Q. Now, yesterday you testified about some specific benefits that the Medusa Company would receive from short-

haul rates, reductions, as being your reasons for being interested in this activity.

A. Yes, sir.

Q. Can you tell us why in connection with your various activities you did not disclose your reasons to either the railroads or to traffic managers of cement companies to whom you addressed communications?

A. Well, there was a competitive feature there that was behind all these activities of mine. We had two mills within 45 miles of each other, and whilt that, of course, was no secret, the fact that the proposal in and of itself did not show any point of origin, it was simply a modified mileage scale, it would have benefited us at Toledo,—that is, at Silica, just outside of Toledo,—and at your Bay Bridge, Ohio, plant, five miles west of Sandusky; also our Wampum plant, which was a border line mill located just over the State line in Pennsylvania; that is, over the State line of Ohio into Pennsylvania.

40941 Q. Well, in Commission's Exhibit 1701 you make certain predictions there of what would happen if short-haul rates were reduced. Would you tell us whether or not at that time, to your knowledge, there was any agreement or understanding that any bases should be eliminated if short-haul rates were reduced, Mr. Cole?

A. No. I knew nothing about any understanding; as a matter of fact, I know little about bases.

Q. Now, Mr. Cole, I show you Commission's Exhibit 1708, and ask you if you recall that document?

A. Yes, sir.

Q. And there is some reference in the record to you holding the proxy of the Wabash Company at this meeting in April, 1932.

A. Yes, sir.

Q. Is that the matter in which you got the proxy?

A. Yes, sir.

Q. Now, just who were present at this meeting of April 7, 1932?

A. In Chicago?

A. Yes.

A. Practically all the traffic representatives of the cement companies in the Central Freight territory, and all of the railroad representatives of the lines serving the

plant, together with the chairman, of course, of the
40942 Central Freight Association.

Q. Mr. Cole, before continuing on with that, I would like to direct your attention to Commission's Exhibit 1678, and Commission's Exhibit 1675-A and B, and ask you if you recall those letters?

A. Yes, sir.

Q. Now, in order to save time, I wonder if your testimony concerning Commission's Exhibit 1701 would also apply to these documents, your letter, Commission's Exhibit 1675?

A. Yes, sir.

Q. And whose handwriting is that on the face of Commission's Exhibit 1678?

A. Mine.

Q. And when was that put on the document?

Mr. MacIntyre: What is the number of that?

The Witness: 1678.

By Mr. Withrow:

Q. When was that put on the document?

A. I more than likely put this on the day after the date of his letter, because I answered it on April 1st.

Q. Now, before answering that letter, did you
40943 discuss the contents of the letter with Mr. MacFarland?

A. No, sir.

Q. Well, did you discuss it with anyone in your company?

A. Not this particular letter. This was just a continuation of my trying to sell this man on my idea and I was having rather a difficult time in doing it.

Q. Now, throughout the record there is some reference to collecting certain figures—

Trial Examiner Norwood: May I see those papers?

The Witness: Yes, sir (handing the documents to the Trial Examiner).

By Mr. Withrow:

Q. —about the extent or volume of cement shipped by truck on the request of the railroads; did you collect such figures, Mr. Cole, or were they collected?

A. I either collected part of them, or the chairman of the C.F.A. collected the balance. I know that at this meet-

ing the railroads suggested that it would be a good idea if they could see or have some information as to the amount of tonnage that was being trucked in the State of Ohio.

40944 The witness identified Resp. Ex. 3263-A to G as a statement dated April 5, which was prepared under his direction, showing a recapitulation of barrels of cement trucked from the Medusa mills during 1931; also the freight charges that would have accrued to carriers if cement had moved by rail. This statement was prepared by the witness at the suggestion of the chairman of "that" meeting. This is the truck figures that are referred to from time to time as being collected for the C.F.A. for account of the Medusa Company. The witness can vouch for the accuracy of that tabulation.

Examination on Voir Dire by Mr. Wooden:

Q. Mr. Cole, referring to this pending exhibit, I notice that it shows the rail rates. Can you say why it did not show truck rates, also?

40945 A. At that time there were no truck rates.

Q. What do you mean,—none that you could put your hands on?

A. None that I could supervise. In other words, it might be the dealer's car or some fly-by-night trucker. I did not know anything—

Q. In other words, a lot of truck deliveries were in the dealer's own trucks; is that it?

A. Oh, yes.

Q. You mean they came to the plant and took it away in their own trucks?

A. Some of them did; yes, sir.

(RESP. EX. 3263-A to 3263-G, was offered and received in evidence.)

Direct Examination (Continued) by Mr. Withrow:

Q. Now, Mr. Cole, I show you Commission's Exhibit 1644-A and B, and that refers in the first paragraph to a meeting on April 8, 1932. Could you tell us whether there were two meetings, one on the 7th and one on the 8th, and if there was only one when it was?

A. There was only one meeting; that was April 8th.

40946 Q. Mr. Cole, I show you Respondents' Exhibit 3264-A and B, and 3265-A and B, and ask you to tell us what they are?

A. Respondents' Exhibit 3264-A is a call for meeting form used by the Central Freight Association. It is dated March 30th.

Q. Did you receive a copy of that, Mr. Cole?

A. Yes, sir.

Q. And what is the second copy?

A. Respondents' Exhibit 3265-A is issued by the Central Freight Association showing the proceedings of a meeting at the Palmer House in Chicago on Friday, April 8, 1932, to consider basis for short-haul rates on cement in C.F.A., I.F.A., and W.T.L. territories to meet motor truck competition.

Q. Now, do those refer to this meeting that you have just been telling us about in your testimony, Mr. Cole?

A. Yes, sir.

40948 (RESP. EXS. 3264-A, 3264-B, 3265-A, and 3265-B, were offered and received in evidence.)

By Mr. Withrow:

Q. Now, Mr. Cole, I show you Respondents' Exhibit 3266, and ask you if this is a copy of the map referred to in Commission's Exhibit 1644-A and B, which you have in front of you?

A. Yes, sir.

Q. Now, I notice on that map that you have a mill 40949 located at Superior in Jackson County, Ohio. Do you find that, Mr. Cole?

A. Oh, yes.

Q. Well, could you tell us whether or not you have made a check to see if there is a cement mill located at Superior and Jackson, Ohio?

A. No. The plant is located at Superior in another county. It is in, I think, Scioto County.

Q. Mr. Cole, these radii on there, were they supposed to reflect the rail mileages?

A. Yes, sir.

Q. Well, are they accurate—I mean, as to the mill, what the rail mileages were from any shipping point to destination?

A. No, sir. They are just zoned in so-called zone territory. It does not reflect the actual station-to-station mileage.

Q. That is what I wanted to know.

Examination on Voir Dire by Mr. Wooden.

40950 Q. What period of time does this map, Respondents' Exhibit 3266, cover?

A. What period?

Q. Yes.

A. How do you mean that, Mr. Wooden?

Q. As of what time is the map applicable?

A. Well, the map was prepared—that is, the zoning there—was prepared in April of 1932.

Q. Well, does it show the conditions as of that date or of some period of time that may have considerably antedated that date?

A. It showed the condition at that time, or it might have been previous; that is, simply represents the distance from those respective mills in 50-mile radius. Those towns have never changed—I mean, they did not move the town. I did not mean that as a smart remark, but they are stationary points that figure—

Q. Weren't these areas on the map the areas in which trucking took place?

A. Oh, yes, yes, that was my idea in selling these railroads.

Q. Then, let me put it this way: Does that represent the situation as to trucking in 1931 as well as April, 1932?

A. I believe I pointed out to the chairman of the railroad that it did represent that condition, that it was over some twenty-odd thousand, or seventeen thousand
40951 carloads; that is, the equivalent of that many carloads trucked from those various mills.

Q. During what period?

A. Well, it was trucked, I would assume, from 1931—I believe that is the statement I made.

Q. And is this map a graphic picture, you might say, of that condition?

A. Oh, yes, yes.

Q. Of the amount of trucking—the extent of trucking in 1931?

A. Well, the possibilities are, that it is just a picture to give the railroads to show the tonnage they were losing in the past, what they were losing at the present time.

By Mr. Withrow:

Q. Mr. Cole, is there any connection between the actual zones on that map and the destinations or places to which the Medusa Company allowed trucking at the time that map was prepared?

A. Oh, no, no, sir.

Q. Was there any connection between the circles drawn on that map and the areas where Medusa Company trucked?

A. No, sir.

40953 Q. I note at the top of the map over in the righthand corner, and in the upper center part, righthand, out into Lake Erie, some figures, one of which is 15 cents, cost of trucking, and then the next is 20 cents, 25, 30. Are those figures,—do they represent the cost of trucking, or the trucking rate in the circles to which the legend applies?

A. Well, I can explain that those were cost studies that I made. This was taken out of my file. It is a copy of one I sent to the chairman of the railroad committee. Now, you see, Mr. Wooden, this is a railroad map. There is not a highway shown on it. It has nothing to do with highway distances at all. It is just a picture we wanted to give the railroads to show an estimate of the area to which there was trucking, and the business they were losing.

Q. Now, with reference to this language here,—15 cents cost of trucking. Does that apply to the cost of trucking in that first circle around Sandusky?

A. No, sir; it is—

Q. Did it apply—what did it apply to?

A. It is just figures that I can put down there that I might have received from somebody that told me that it was costing us 15 cents a barrel to truck for the first 10 miles.

40954 Q. And that first circle is the first 10 miles?

A. Yes, that first circle is the first 10 miles. You see, this is taken right here from Bay Bridge, and it is 5 miles this way and 5 miles that way.

Trial Examiner Norwood: That might apply to all the small figures?

By Mr. Wooden:

Q. Do these other figures apply in the same way to other circles?

A. They do not represent—they are cost figures I got—do not tend to show we pay that, because it was simply a study. This was never submitted to the railroads.

Q. I understand.

A. Or the chairman of this committee.

Q. Well, whose cost of trucking is that?

Trial Examiner Norwood: He said it is an estimated cost.

The Witness: That is just an estimated cost. I did not know whose cost it was.

By Mr. Wooden:

Q. It was not Medusa's cost. Well, does the same testimony apply to this handwriting over the upper left-hand corner, that says "Cost of trucking"?

A. Yes.

Q. And then there is 30 cents, and 30 cents in
10955 these two outer circles centering on Toledo, well, 30 cents, 25, 14 cents in the first circles surrounding Toledo.

A. These figures, as I recall, as you remember I mentioned some time ago that we were trying to get legislation, to get some sort of legislation with respect to contract carriers, and this being my office copy I more than likely showed these figures so that they would be fresh in my mind when we eventually were able to handle trucking rates.

Q. I asked your whose handwriting the figures is?

A. I do not know, Mr. Wooden.

10956 Trial Examiner Norwood: Proceed.

By Mr. Wooden:

Q. Were they put on in your office?

A. I imagine it was. It has been in my file for a long time.

Q. And can you say where the information came from that gives the figures in those various circles?

A. No, sir; I cannot, Mr. Wooden.

Q. It did not come from within your own company, anyway, did it?

A. Well, it possibly might have; I do not know.

Q. You just do not know?

A. No. Those figures did not mean a thing to me, as far as the purport of that exhibit is concerned.

Mr. Wooden: Well, there is no objection to the exhibit, Your Honor, provided the figures and the handwriting—the written notations—are also included.

Mr. Withrow: Well, they are not offered.

Mr. Wooden: Well, I will offer them, then.

Mr. Withrow: I will object to them as irrevelant and immaterial, and on the grounds that no basis has been laid for their receipt in evidence; they are not identified; and the witness was not able to identify the person who wrote them. I do not think we should receive evidence of that character in this proceeding.

40957 Mr. Wooden: I would like to amend my statement by saying that I have no objection to the document if the figures and handwritten notations are included in the offer.

Trial Examiner Norwood: What do you say to that?

Mr. Withrow: I have made my statement. I object to the receipt in evidence, if that is an offer of the figures,—and I press the receipt of the document as it was sent to Eugene Morris, chairman of the Central Freight Association.

Trial Examiner Norwood: I will overrule the objection and receive the document, and you may cross-examine him further as to the writing on it, and make your offer.

Mr. Wooden: If you are not receiving it, I made the offer at this time, Your Honor, on the basis of the voir dire.

Mr. Withrow: Could I have that statement read? (Statement by Mr. Wooden read.)

Mr. Withrow: Well, on that basis, I will withdraw the offer and ask that this other map be marked for identification. It is another map from the files. It does not contain any figures.

Mr. Wooden: The offer still stands.

Mr. Withrow: I have withdrawn the offer, Your Honor.

Trial Examiner Norwood: I think that my ruling will stand. This witness has explained to us about the
40958 estimate there, and it is part of his testimony.

Mr. Withrow: Well, is it Your Honor's ruling—

Trial Examiner Norwood: And I overrule the objec-

tion and receive Respondents' Exhibit 3266 in; and the writing is not in evidence yet, but I am leaving it in there to the end that the witness may be questioned further about that, and let us get all the information we can about this,—the effect of trucking rates, and so forth.

Mr. Withrow: Is it Your Honor's ruling that I cannot withdraw an exhibit before Your Honor has ruled on it,—withdraw an offer? I withdraw the offer.

Trial Examiner Norwood: I suppose then—.

Mr. Norwood: I object to the withdrawal of the exhibit.

Trial Examiner Norwood: You have a right to withdraw the exhibit.

Mr. Withrow: It is a well-established principle of law that having objected to the offer of the document; Mr. Wooden cannot also object to the withdrawal.

Trial Examiner Norwood: You may withdraw it.

Mr. Withrow: I would like to have this map marked as Respondents' exhibit, for identification.

(The document was marked for identification "Respondents' Exhibit 3267.")

Mr. Wooden: Your Honor, I would like to ask 40959 that the document be marked for identification as Commission's exhibit, so I may offer it at this time.

Mr. Withrow: Well, you people had it under subpoena. I do not see why we have to waste time now.

By Mr. Withrow:

Q. M. Cole, I show you Respondents' Exhibit 3267, and ask you if this is another copy of a map which you prepared and a copy of which you submitted to Mr. Morris, pursuant to paragraph 1 of Commission's Exhibit 1644-A and B?

A. Yes, sir.

Mr. Withrow: Your Honor, I offer in evidence at this time Respondents' Exhibit 3267.

Just one more question:

By Mr. Withrow:

Q. Would the statements as to the basis of this document which you have given already be the same for Respondents' Exhibit 3267 as they have been for Respondents' Exhibit 3266, with the exception of the testimony about the pencil figures?

A. Yes, sir.

Mr. Wooden: Your Honor, I request that the preceding exhibit be marked for identification as Commission's exhibit.

Trial Examiner Norwood: It has been marked.

Mr. Wooden: Not as a Commission's exhibit.

Trial Examiner Norwood: Well, what is the next
40960 number?

Mr. Wooden: Mr. Withrow has taken it back.

Trial Examiner Norwood: The document withdrawn has previously been marked Respondents' Exhibit 3266, for identification, and it may be marked Commission's Exhibit 3253, for identification.

Mr. Withrow: What is this, an informal subpoena?

Trial Examiner Norwood: I supposed that Counsel gave his permission.

Mr. Withrow: No. Counsel has not given his permission. I do not see why we should waste our time in this proceeding.

Trial Examiner Norwood: If Counsel objects to that, I suppose that the identification is sufficient already.

Mr. Wooden: As to the identification, I have no quarrel.

Trial Examiner Norwood: Well, if you want the paper, you can serve notice on him, or serve a subpoena.

Mr. Wooden: I now serve notice and formally request that this map, which was offered in evidence, be submitted here and now for the purpose of having it marked as a Commission exhibit.

Mr. Withrow: Well, I have no objection to the Reporter putting figures on this document. I do not care what he writes on it. I will let him write anything
40961 he wants, but I am not complying with Mr. Wooden's request of turning the document over to him, if that is what it is.

Trial Examiner Norwood: Well, he might subpoena it for cross-examination.

Mr. Withrow: He may subpoena it. He has demanded that we produce it. When he shows at some time a particular purpose for the use of the document, and we are satisfied with it, we will be very glad to comply, but to just demand papers off of opposing counsel's table, right off the table, I do not think is proper procedure.

Trial Examiner Norwood: Well, it shall not be marked unless Counsel consent.

Mr. Withrow: I said I had no objection to the Reporter writing all over the face of the document, if that is all the request is.

Trial Examiner Norwood: The map with the writing is marked "Commission's Exhibit," for identification, "3253" ad it is returned to the custody of Counsel for the Respondents.

(The document above referred to was marked for identification "Commission's Exhibit 3253.")

Trial Examiner Norwood: Now, the offer is of Respondents' Exhibit for identification, 3267. Have you offered that yet?

Mr. Withrow: Yes, sir; I have, Your Honor.

40962 Mr. Wooden: Well, Your Honor, there is a paper present in the hearing room that was offered in evidence by Respondents' Counsel. It has now been given and marked with the Reporter's mark Commission's Exhibit 3253, for identification, that paper being produced here in open court and offered in evidence, and now marked for identification as Commission's exhibit; I offer it in evidence at this time.

Mr. Withrow: We have no objection.

(COM. EX. 3253, was offered and received in evidence.)

Trial Examiner Norwood: As I assume, according to our usual understanding, that no unidentified pencil notations are received as part of the document.

Mr. Wooden: Well, my offer includes those pencil notations which the witness testified about.

Mr. Withrow: Well, my consent to their being received was predicated on the fact that they were unidentified.

40963 (RESP. EX. 3267 was offered and received in evidence.)

By Mr. Withrow:

Q. Now, to come back to this meeting of April 8th, Mr. Cole, could you tell us what took place at that meeting?

A. There was a discussion on my proposal, and each traffic representative of the cement manufacturers in attendance was asked to state their views, which was done. There was—

40964 Q. Well, did all of these shippers agree or did all of them state that they were in favor of reduction in short-haul rates?

A. Oh, no, by no means. There was one vigorous protest by several of the shippers.

Q. What stand did the railroads take?

A. Well, as usual, in those meetings, Mr. Withrow, the railroads are in what you might call a receptive mood to receive information only and not give any ruling at that time, and they generally wind up the meeting by stating that the matter will be taken under advisement.

Q. Is that what they did in this case?

A. Yes, sir.

Q. Now, in some of these letters here there is a reference to possible meeting of shippers before the joint meeting with the carriers. That was to be on the morn-
40965 ing of the same day. Was any such meeting held, Mr. Cole?

A. No, sir.

Q. Now, was any agreement reached between the shippers at that meeting concerning the short-haul rate problem?

A. No, sir; there was not.

Q. Well, what was the result, if any, of this meeting?

A. The majority favored the proposal, as I recall, but the objectors, particularly the Lehigh and the Universal representatives, were rather vigorous in their protests, and they cited various reasons why they did not feel that this proposal should be adopted.

Q. Now, in connection with that meeting in Chicago, did you attempt to make any sort of record at the time of the companies which were for or against the plan on the basis of their statement at that meeting?

A. Yes, sir. I not only made a record but the chairman of the Central Freight Association presiding at the meeting made a record.

Q. Well, I show you Commission's Exhibit 1454-A to C, for identification, and ask you if Commission's Exhibit 1454-A to C is the record which you made?

A. Yes, sir.

Q. And I show you Commission's Exhibit 1043-5-G, and ask you if that is a copy of the record which you made?

A. Yes, sir.

40966 Q. Now, I believe you testified that no general reductions in short-haul rates were made on the basis of this proposed reduction up to 50 miles; is that correct?

A. Yes, sir.

Q. Now, did you continue your activity on behalf of the Medusa Company for short-haul rates after this time?

A. Yes, sir.

Q. And would you tell us your reasons for continuing your activity?

A. Well, my attention was called to what I termed some piecemeal adjustments by the railroads in the Central Freight Association territory shortly after my proposal was turned down, and I felt justified in asking these railroads for relative reductions from our plants,—from the Medusa plants.

Q. Now, would you look again at Commission's Exhibit 1644. There are various references to marketing practices of cement companies. Would you tell us where you secured that information?

A. This information came to me through our district sales office in Toledo.

Q. Now, that letter, Mr. Cole, refers to an old plan and a new plan. Would you tell us what you mean by those phrases, if you can recall?

A. I mean the old plan—by the old plan, I mean the trucking of cement was largely in the hands of the
40967 dealers with their own equipment. They were coming to the plants of the Medusa Company any time during the day, or sending some trucker there for cement.

Q. And what did you mean by the new plan?

A. The new plan is what I would call regulated trucking in that we signed a contract, a bi-lateral contract, which was placed on file with the Public Utilities Commission of Ohio. This contract carried a statement of rates appended to the contract, showing that the contract trucker and ourselves had entered into an agreement whereby he would truck cement at our direction and under our supervision from our plant to destinations specified by our company, and he would call with his trucks when we wanted him to, so that there would be no interference with the routine working for the day.

Q. Would you tell us whether or not, Mr. Cole, to your knowledge, the Medusa Company entered into any agreement with its competitors to adopt this so-called new plan of trucking that is referred to in Commission's Exhibit 1644?

40968 A. No, sir.

Q. Now, were there any meetings of manufac-

turers after this meeting of April 8, 1932, concerning this matter of securing reductions in short-haul rates?

A. Not that I recall.

Q. Now, you testified as to why you wanted these short-haul rates for the Medusa Company. Were you selected by any committee of manufacturers to handle this matter of short-haul rates with the railroads?

A. No, sir.

Q. Now, did the rates which you proposed bear any relation to costs of trucking, Mr. Cole?

A. Yes, sir.

Q. And what was your source of information about the cost of trucking?

A. We ran some tests ourselves, and interviewed recognized contract truckers.

When I use the word "recognized," I have in mind that they were recognized by the Public Utility Commission of Ohio as a legal contract carrier.

Q. Now, did the railroads ever take any action with reference to this short-haul rate application subsequent to this meeting in April, 1932?

A. The only action they took was to table the proposal.

Q. Now, referring back to that exhibit, Commission's Exhibit 1644, which you have, in that letter there you say that the Huron Company arranged to control trucking around Toledo. Would you explain to us what you mean by "arrange to control," who the arrangement was with?

A. Information came to me from our district sales office that the Huron Cement Company had entered into a contract with a contractor-trucker—

Q. And those are the contracts which you stated are on file?

A. With the Public Utilities Commission of Ohio, yes.

Q. Now, going back to this matter of cost study. I have found the document I wanted.

I show you Respondents' Exhibit 3258, for identification, and ask you if the rates contained under the heading "Present Trucking Rates" are the result of that study of trucking costs which you referred to?

A. Yes, sir.

Q. On the right-hand column there I believe you ran the trucking rates across up to about 70 miles; is that correct?

A. Yes, sir.

Q. Would you tell us why you only ran it as far as 70 miles, when the C. F. A. scale ran to 700 miles?

A. We endeavored here to strike a fair average. There was information came to me that in some instances trucking extended to 70 miles. I had in mind there, as I recall, that there was trucking from our Silica plant into the State of Michigan.

40970 Q. Now, you testified that no general change was made in this Ohio territory. Did the Medusa Company ever get for itself any revisions downward in the short-haul rates?

A. Not that I recall, Mr. Withrow.

Q. You testified that other people got some revisions. Do you recall any specific instances?

A. I recall Lehigh Cement Company, from its mill at Mitchell, Ind., received revision in rail rate to meet truck competition. There were one or two cases in and around Buffalo into New York State.

Q. Well, would you tell us whether or not the attitude or stand of the Medusa Company with reference to applicability of the 12710 scale has continued since 1932?

A. Yes, sir.

Q. Mr. Cole, I show you Commission's Exhibit 1043-5-C and 5-D, and ask you if you recall that letter.

A. Yes, sir.

Q. What was this map referred to in the first full paragraph there of Commission's Exhibit 1043-5-E?

A. That is a Rand-McNally railroad map of Ohio zoned in an area of 50 miles from each plant in Ohio in
40971 10-mile blocks, in so-called 10-mile zones.

Q. This refers to a stand taken by Mr. Gubernator, of the Lehigh Company. What stand did he take after that meeting of April, 1932? Was he in favor or was he opposed to the reduction?

A. He was very much opposed to this proposal to reduce the rates; that is, reduce the short haul, to short haul points, and in a letter, or several letters, I recall he wrote to Chairman Morris, pointed out various reasons why these rates should not be adopted; particularly he mentioned that the railroads would lose a lot of cross-hauls.

Q. Did Mr. Gubernator, to your knowledge, ever change his stand on the short-haul rate proposal which you made in 1932? I mean, did he ever represent to the railroads, to your knowledge, withdrawing his opposition?

A. Not to my knowledge.

Q. Mr. Cole, I show you Commission's Exhibit 40972 1626, and ask if you recall that letter.

A. Yes, sir.

Q. And under what circumstances did you write that letter to Mr. Lucas?

A. I received a letter, as I recall, from Mr. Lucas, telling me that it would be impossible for him to attend this meeting, but he would appreciate it if I would let him know the result of that meeting.

Q. Now, Mr. Cole, I show you Commission's Ex-
40973 hibit 1624, and ask you to tell us under what circumstances that letter was written.

A. This letter, which I wrote to Mr. McKean, who at that time was sales manager of the Castalia Portland Cement Company, was occasioned by the fact that Mr. McKean did not, to my knowledge, attend that meeting, and I simply pointed out to him that the chairman, Mr. Morris, had requested, during the proceedings of that meeting, that certain data be furnished by the various cement companies with respect to tonnage that had moved by truck during a certain period, and I suggested that he write to Mr. Morris giving him that information.

Q. Mr. Morris was the chairman of the C. F. A.?

A. Yes, sir; representing the railroads.

Q. Mr. Cole, I show you Commission's Exhibit 1619, and ask you if you recall receiving that letter from the Central Freight Association?

A. Yes, sir.

Q. Did you take any action on that letter in any way?

A. No, sir.

Q. Now, do you know whether some of the cement shippers sent in this information concerning the volume of cement shipments to the freight association?

40974 A. Yes, sir. I recall that I received copies of several letters that had been written to Chairman Morris; they sent me copies.

Q. I show you Commission's Exhibit 1617 and Commission's Exhibit 1636, and ask you if those are copies you were just referring to?

A. Yes, sir.

Q. Now, did you take any action with reference to either one of those letters, copies of which you received; that is, Commission's Exhibit 1636 and Commission's Exhibit 1617?

A. No, sir.

Q. Mr. Cole, I show you Commission's Exhibit 1614, and ask you if you recall that memorandum?

A. Yes. I recall this.

Q. Well, who is the "M. F. B." who signed that memorandum?

A. That is M. F. Byrne.

Q. And who is he?

A. At that time, Mr. Withrow, he was district sales manager for the Medusa Company, stationed in Pittsburgh.

Q. And who is this C. W. Miller?

A. Mr. Miller was at that time, and still is, salesman in the Pittsburgh territory.

Q. Did you take any action on receiving copy of that memorandum?

A. No, sir.

40975 Q. Now, after this meeting in Chicago with the Central Freight Association, and these letters that we have just been talking about, did you ever make any check to find out whether or not any companies continued or discontinued trucking, Mr. Cole?

A. No, I do not recall making any investigation, Mr. Withrow.

Q. Now, I show you Commission's Exhibit 1613, and ask you if you recall that letter?

A. Yes, sir. I recall writing Mr. Meyer.

Q. Now, you refer there to a telephone conversation between Mr. McFarland and Mr. Meyer. Did Mr. McFarland advise you about this telephone conversation?

A. Yes. I recall that I was out of town, and I talked to Mr. MacFarland, and Mr. MacFarland simply called my attention to it.

Q. Was that the basis of the statements which you made in Commission's Exhibit 1613?

A. Yes, sir.

Trial Examiner Norwood: Let me see that.

(The witness hands the paper to the Trial Examiner.)

By Mr. Withrow:

Q. And would you look at the first paragraph of Commission's Exhibit 1613, Mr. Cole, and explain to the Examiner what you mean by the first paragraph in that letter?

40976 A. I was simply pointing out to Mr. Meyers and enclosing with my letter letters written by Mr. Gubernator and Mr. Hogue, of the Kosmos Portland Cement Company. Those two letters that I just referred to were written to Chairman Morris after the Chicago Railroad meeting, and they were in opposition to the proposal.

Q. Was there any further action taken,—anything further done between you and Mr. Meyer, of Green Bag?

A. Not that I recall, sir.

Q. Now, when you referred to this letter of Mr. Hogue, were you referring to Commission's Exhibit 1617?

A. Yes. But I now notice that Mr. Hogue's letter, I must have had him confused with another protestant; I notice he is in favor of this proposal.

Q. Mr. Gubernator was opposed?

A. Yes, sir.

Q. And you sent one on each side?

A. That is right; yes, sir.

Q. Mr. Cole, I show you Commission's Exhibit 1615-99, and ask you if you recall receiving the telegram and sending your reply?

A. Yes, sir; I recall receiving this telegram and answering it.

Q. Well, now, the telegram, Commission's Exhibit 1600, is just dated some date in May. Could you help us

40977 fix the year, Mr. Cole?

A. It was 1932, because in my reply, recorded as Commission's Exhibit 1599, my telegram is dated May 13, 1932.

Q. Mr. Cole, could you tell us what the basis was of your statement in your reply to Mr. Cleveland about what Medusa would do?

A. Well, Mr. Withrow, I had in mind when I replied to Mr. Cleveland that during 1931 there was considerable trucking in Ohio, and it was not satisfactory to our operating people nor our management, in view of the fact that we did not have the facilities, the proper facilities, to take care of the trucking, and I was simply voicing my own opinion that we tried to discourage it, but we simply had to meet the competition or forego the business, and we did not want to forego the business.

Q. Mr. Cole, do you recall when the C. F. A. informed you that it had tabled the application for reductions

40978 on short-haul rates?

A. I recall it was some time before, six weeks after the April 8th hearing—meeting, rather.

The witness identified Resp. Ex. 3268 as a letter from Chairman Morris, dated May 19, 1932, notifying him about the C. F. A.'s decision.

(RESP. EX. 3268 was offered and received in evidence.)

By Mr. Withrow:

40979 Q. Mr. Cole, would you look at your telegram, Commission's Exhibit 1599, and tell us what you had in mind when you stated the industry was trying to discourage trucking without success.

A. Well, I had in mind—

Mr. Wooden: This is the same question that was objected to as leading a few minutes ago, Your Honor, and, of course, the harm is done with that leading.

Trial Examiner Norwood: Read the question that was excluded a while ago.

Mr. Withrow: Of course, if that other question was harmless leading, and it is now put before the witness—

Trial Examiner Norwood: Read this question.

Mr. Withrow: I submit that this question is not leading.

(Question read.)

Trial Examiner Norwood: I shall let him answer.

Objection overruled.

A. It went to my efforts with the railroads to secure rate reductions to short-haul points.

Q. Mr. Cole, you referred a few minutes ago to certain piecemeal adjustments of short-haul rates following this application which was turned down in May, 1932. I show you Commission's Exhibit 1574, and ask you if that is one of the instances which you had in mind.

A. Yes, sir.

40980 Q. Did you take any action on this request for a reduction in rate from Mitchell to Louisville?

A. Yes, sir. I wrote the chairman of the Central Freight Association calling his attention to this proposal and that they had made this adjustment, whereas they turned me down several months previous. I just could not see the consistency of the thing.

Q. And whose mill is located at Mitchell?

A. The Lehigh Portland Cement Company.

Q. And what was the attitude of the Lehigh Portland Cement Company with reference to that?

A. They were vigorously opposed to my rate proposal.

Q. Mr. Cole, I show you Respondents' Exhibits 3269 to 3284, and I will ask you to run through these documents and identify them.

Trial Examiner Norwood: General description?

By Mr. Withrow:

Q. Give a general description, if you can, or just run through them one at a time.

40981 Mr. Wooden: I will agree that the witness would testify that the documents are what they purport to be on their face.

40982 Examination on Voir Dire.

By Mr. Wooden:

Q. Referring to Respondents' Exhibit 3271, for identification, the initials in the lower lefthand corner are "A. M. C."? and the general traffic manager's signature. Who is "A. M. C."?

A. He is my assistant in all rate matters and signed under my name.

Q. Do all these other carbons here, the initials "G. W. C." and "General Traffic Manager," the "G. W. C." indicates the initials of the writer?

A. Yes, sir.

By Mr. Withrow:

Q. These documents, Mr. Cole, you have just

40983 identified, are they other instances where there were applications and action by the railroads on piecemeal adjustment of the short-haul rates?

A. On cement.

Q. On cement?

A. Yes, sir.

Q. And what stand did you take on behalf of the Medusa Company with reference to these piecemeal adjustments made on rates from their mills?

A. I criticized the railroads rather severely in some of these letters for making these piecemeal adjustments.

Q. Did you attempt at that time to discuss with your railroads serving your mill about the Medusa Company receiving short-haul rate adjustments?

A. Yes, sir. I spoke to them on various occassions. They have their general office right in our town of Cleveland.

Q. And did they give you any short haul rates?

A. No, sir.

Q. Now, Mr. Cole, I would like to direct your attention to Commission's Exhibit 1523-A and B, and ask you if you recall that letter.

A. Yes, sir.

Q. And would you state under what circumstances that letter was written?

A. As I recall, Mr. Brennan, the assistant
40984 freight traffic manager of the New York Central Railroad, located in Cleveland, on one of his calls on me talked about cement rates and other modes of competing transportation on cement, and he asked me if I would give him sort of a resume of what progress had been made by our company or by me in trying to get a comparable rail rate versus the trucking rate, and I told him I would do so, and this letter is the result of that promise.

Q. Now, would you look at the second full paragraph on page 2 of the letter and explain to us what you meant by that paragraph?

A. The paragraph where I say, "The above will give you a good idea"? The second here (indicating), or this one here (indicating)?

Q. The second full paragraph.

A. Oh, I see.

Q. No, "The above will give you"—

A. Well, I had several reasons for expressing this thought.

Q. Would you just state them briefly for the record, Mr. Cole?

A. One reason, I wanted to impress on Mr. Brennan the importance of this particular tonnage; and the second was that the Medusa Company had lost quite a bit of tonnage in its nearby markets.

Q. Now, I believe you said this letter—

A. I would like to follow this up.

40985 Q. All right. Will you finish, Mr. Cole? I thought you had.

A. I simply wanted to show him also that this tonnage that I mentioned here would ordinarily have moved from Bay Bridge, which he lost. His railroad serves our Bay Bridge plant.

Q. Now, were copies of that letter sent to all the various railroads listed on the top of 1523-A?

A. Yes, sir.

Q. And would you tell us your reasons for sending it to all of the railroads listed there?

A. Well, I could have written separate letters, but I took a short cut here and sent copies to the interested railroads. I say "interested"; they were participants in the meeting which was held in April 8 in Chicago, 1932.

Q. Are they all railroads over which the Medusa Company from time to time shipped cement?

A. Yes, sir.

Q. And does this represent a continuation of your effort to secure reduction in short-haul rates, Mr. Cole?

A. Yes, sir.

Q. I would like to direct your attention to Commission's Exhibits 1518 and 1521, and ask you if those are two replies to your letter of 1523, which you received about that time.

A. Yes, sir.

Q. Now, did the railroads take any action on this letter of yours of January 16, as far as you know?

40986 A. You mean actually with respect to reducing my rates?

Q. Yes.

A. No, sir.

Q. And I show you at this time also Commission's Exhibit 1512 and ask you if that is a reply from another railroad to your letter of January 16?

A. He mentions my letter of the 18th, but I presume he means January 16th.

Q. To your knowledge?

A. Yes, sir.

Q. Now, did you ever have an occasion to follow up with the New York Central Railroad this letter of yours of January 16 in an effort to get them to reduce short-haul rates?

A. It seems to me I either talked with the New York Central people or wrote them later on.

Q. Well, I show you Commission's Exhibit 1507, and ask you if that refreshes your recollection.

A. Yes, sir; it does.

Q. Did you write that letter?

A. Yes, sir.

Q. And was any action, to your knowledge, taken by the New York Central or any other railroad on the basis of or after that letter, Commission's Exhibit 1507?

A. Well, in this letter I requested a reply, and I pointed out to this New York Central executive that
40987 he was making piecemeal adjustments in connection with the movement of cement.

Q. Were those the circumstances that you were referring to in the third paragraph of the letter?

A. Yes, sir.

Q. Now, I show you Commission's Exhibit 546, No. 2-I and 2-J, which purports to be a typewritten copy of a letter by you, and ask you to examine it and tell us whether or not that is a copy of the letter.

A. Yes, sir. I recall writing this letter.

Q. Would you explain what you meant by the statement there, there was an understanding that when the Docket 8182 basis was established no change would be made in relationship as between producers?

A. Well, that was an understanding that grew up in the course of the hearing before the Interstate Commerce Commission back in 1916 or '17. I know—I remember the decision was in 1918. They used the same yardstick in the measurement of the rates from each producing point to certain key points, and it was a general understanding that there would be no disturbance from one mill because it would disrupt the relationship.

Q. And was this relationship between the mills put in the decision of the Interstate Commerce Commission?

A. Yes, sir.

Q. And would the railroads or anyone else be
40988 able to change that relationship without formal application to the I. C. C.?

A. No, sir.

40989 Q. Mr. Cole, I show you Respondents' Exhibits 3285 through 3288, and ask you if this is the file of the decision on western cement rates, to-wit, Docket 8182, to which you were referring in your letter, Commission's Exhibit 546-2-I and 2-J.

A. Yes, sir. This is not only the decision of the Commision in Docket 8182, but it contains its order, and in cases where the Commission issued an order, as long as that order runs on those rates they could not be changed by the railroads except on authority from the Commission.

Q. And was your statement in this letter, Commission's Exhibit 546-2-I and 2-J based on this Docket 8182?

A. Yes, sir.

40991 Mr. Withrow: I will ask the Examiner and the Federal Trade Commission to take judicial notice of the Interstate Commerce Commission decisions rendered in the western cement rates, Docket 8182, found in 48 I.C.C. 201; 52 I.C.C. 225; 69 I.C.C. 644, and 132 I.C.C. 273.

Trial Examiner Norwood: Proceed.

By Mr. Withrow:

Q. Mr. Cole, did the Interstate Commerce Commission ever modify the 12710 rate scale around Pittsburgh?

A. I would like to answer your question in this way.

Mr. Withrow:

40992 The Public Service Commission of Pennsylvania modified that scale. The carriers took it into court, and the court upheld the Commission of the State of Pennsylvania, and then the carriers filed application with the Interstate Commerce Commission claiming that the action of the State Commission discriminated against interstate commerce, and as a result of that the Interstate Commerce Commission held a hearing and they confirmed—or dismissed the proceedings, rather, confirming the adjustment made by the State Commission—Public Service Commission of Pennsylvania.

Q. Was this case that you are referring to now the so-called Davison Coke & Iron Company v. the B. & O. Railroad?

A. Yes, sir.

40993 (RESP. EXS. 3289 and 3290 were offered and received in evidence.)

Q. Mr. Cole, did you attend the hearings or some of the hearings in this matter of the Davison Coke & Iron Company?

A. Yes, sir.

Q. And what position did the Medusa Company take with reference to this application?

A. We were opposed unless there would be a general reduction, although we did testify, as I recall, that perhaps there was some justification for modification up to 20 or 30 miles in that particular territory, which involved Pittsburgh only.

Q. And what companies secured lower short-haul rates?

A. The Green Bag Company and the Universal Atlas Cement Company.

Q. And you have already testified that the Universal-Atlas Company opposed your application for reduction in short-haul rates; is that right?

A. Yes, they did, five years previous.

Q. That is right.

Now, what was the effect of the decision of the Public Service Commission? To what extent did it affect rates?

A. Well, it had this effect, Mr. Withrow: It disrupted the relationship and gave quite an advantage to the
40994 plant of the Green Bag Company and the plant of the Universal-Atlas Cement Company located at Universal, Pa.

Q. And to what distance did they reduce these rates at that time?

A. They started in five-mile blocks, reduced them up to 50 or 55 miles.

40995 (RESP. EXS. 3269 to 3284, were offered and received in evidence.)

40997 By Mr. Withrow:

Q. Mr. Cole, I show you Respondents' Exhibit 3291-A to P, and ask you if that is the report and order in the case of Davison Coke & Iron Company that you testified about ths morning?

A. Yes, sir.

Q. And I show you Respondents' Exhibit 3292 and ask you if that is the appendix which is referred to on
40998 page 2 of this report of the Public Service Commission of the Commonwealth of Pennsylvania?

A. Yes, sir.

Q. Now, were the rates which were contained in this order, and which are set forth on page P of Respondents' Exhibit 3291, were they placed into effect?

A. Yes, sir. The railroads published the rates.

Q. And would you tell us whether or not this amounted to a revision in the 12710 scale as it had been extended on a voluntary basis by the railroads to the Pittsburgh area?

A. Yes, sir; a downward trend in the rates up to 55 miles.

41002 Q. This appendix, marked Respondents' Exhibit 3292, in the righthand column, where it says, "Prescribed short-haul cement rates," are those the rates

as contained in the order of the Public Service Commission of Pennsylvania?

A. Yes, sir.

Q. From what shipping points were those rates applicable, pursuant to the order, Mr. Cole?

A. Neville Island, of the Green Bag Company, and Universal, Pa., of the Universal Atlas Cement Company.

41004 (RESP. EX. 3292, was offered and received in evidence.)

41008 By Mr. Withrow:

Q. Mr. Cole, you did testify that the Public Service Commission of Pennsylvania took a stand on the 127.10 scale. Would you tell us what part or from what source or from what information you made that statement?

41009 A. On page 12.

Q. And where does the paragraph begin?

A. It is the second paragraph; and also on page 13, the starting of the last paragraph.

Q. Mr. Cole, this document is entitled "Report and Order." Is the entire thing the order of the Public Service Commission?

A. The opinion and the order; yes, sir.

Q. Well, is there any way in which we can divide it so we only have in the record the actual order of the Commission without the opinion?

A. I would like to add to this last statement of mine that also on page 15, the second paragraph is further evidence in substantiation of my statement.

Now, in connection with your question, Mr.

41010 Withrow, it would be necessary to start at the middle of page 15, and that would include everything to here (indicating.)

41016 Q. Mr. Cole, I show you Respondents' Exhibit 3293, for identification, and ask you if that is a letter written by you.

A. Yes, sir.

Q. Was that written in connection with the letter which has been received in evidence here, Commission's Exhibit 1793-A to D?

A. Yes, sir.

Q. Now, I would like to direct your attention to page D

here where the name of C. M. Tuttle, Marquette
41017 Cement Company, appears, and ask you to tell us if you can whether or not a letter was sent to him on the same day; that is, January 29, 1932, as the other persons listed in Commission's Exhibit 1793?

A. Yes, sir; it was. I know that because—well, no, no. I beg your pardon, Mr. Withrow. I notice in my letter to Mr. Stevenson, of the New York Central, that I suggest that he add the name of the Marquette Cement Manufacturing Company to the letter above referred to, and I refer to my letter of January 29.

Q. Does that refresh your recollection about approximately when you sent that letter to the Marquette Company?

A. Yes, sir; it does.

Q. And was that subsequent to January 29?

A. Yes, sir.

Q. I show you Respondents' Exhibit 3294-A and B, and ask you if this is a photostat of the letter which you sent to the Marquette Company?

A. Yes, sir.

Q. And from looking at that letter, can you now
41018 tell us on what date you sent the letter to the Marquette Company?

A. I sent it out on the same day that I wrote to Mr. Stevenson.

Q. What date was that?

A. February 3, 1932. That is, to the best of my recollection, February 2 or February 3.

Q. Now, I show you Commission's Exhibit 1731, and ask you if the letter referred to in that first paragraph there is the letter which has now been marked "Respondents' Exhibit 3294-A and B"?

A. Yes, sir.

Q. And is Respondents' Exhibit 3294-A and B the same as Commission's Exhibit 1793, with the exception that in one instance the date is January 29, 1932, and on Respondents' Exhibit 3294 the date is February 2, 1932?

A. Yes, sir. The letters are identical except for the dates.

Q. Did the Medusa Company truck in Ohio—well, say, in July, 1937?

A. Yes, sir.

Q. And how does the amount of cement that Medusa trucks either then or now—I mean 1937, compare with the shipments by truck in 1931?

A. About the same.

41022 Q. Are you familiar, Mr. Cole, in a general way, with the trucking cost to the Medusa Company, say, in Ohio?

Mr. Wooden: I object, Your Honor. It is irrelevant and immaterial and has no bearing upon the relative 41023 costs of truck transportation and rail transportation.

Trial Examiner Norwood: The objection is sustained.

Mr. Withrow: Could I have the question—

Trial Examiner Norwood: I am excluding that as cumulative. You have covered that a great many times here.

Mr. Withrow: With reference to Your Honor's ruling, I want to note an exception in view of the fact that the complaint specifically alleges that this Respondent has monopolized the benefits of the cheaper means of delivery including truck and water delivery, and I am merely attempting to meet that allegation and such proof as the Commission has offered on that point; and in view of that fact I would like to ask Your Honor to reverse your ruling to permit us to proceed with the examination on this subject.

Trial Examiner Norwood: That is a request. I do not feel that I should comply with that request.

Mr. Withrow: I offer to prove through this witness that he is familiar with the trucking costs of the Medusa Company generally and specifically with reference to the trucking costs in the State of Ohio.

By Mr. Withrow:

41024 Q. Now, Mr. Cole, has the Medusa Company made any changes in its mill in order to facilitate loading by truck?

A. Yes, sir.

Q. What changes have you made?

A. Well, at Bay Bridge we built a new pack house to take care of trucking exclusively at a cost of about $50,000.

41028 Trial Examiner Norwood: From here on I am going to reject testimony along that line on the

ground that it has been sufficiently covered, and on the ground of positive necessity of getting on with this case, and we have a wealth of information on those points, and now if it appears to the Commission hereafter that the evidence is incomplete on that point you may ask them to remand the case to take testimony on the one point, but I am going to rule it out, evidence on trucking and trucking conditions, unless you show that they are sold on other than a delivered basis. I will take the responsibility, and I will give you your exception to that, but I find it is necessary.

Mr. Withrow: Well, I would like to point out, Your Honor, that we are attempting to meet here on behalf of this Respondent, the Medusa Company, proof which we contend is incomplete and, consequently, inaccurate, concerning the Medusa Company on the question of whether or not the Medusa has failed to pass on to its purchasers the benefit of truck transportation, and—

Trial Examiner Norwood: When in truth and in fact there was no benefit?

Mr. Withrow: That is right.

41029 Trial Examiner Norwood: Now, I will say that if there is a finding or a recoinmendation for a finding that this client of yours, on that, you would have a valid exception.

By Mr. Withrow:

Q. Do cement truckers, Mr. Cole, file rates with the Public Service Commission in Ohio?

A. Yes, sir.

Q. Are they required by law to file these rates?

A. Yes, sir.

Mr. Wooden: That is objected to, Your Honor, as irrelevant and immaterial.

Trial Examiner Norwood: Sustained.

Do you want to show that those rates are the same as the rail rates or different or what?

Mr. Withrow: I want to show that the truck filed rates today,—or, I mean, as of the date of the complaint, were lower than the trucking costs which existed at the time of 1931 and 1932, and how they compare with the rail rates.

Trial Examiner Norwood: Well, what does that go to?

Mr. Withrow: Well, it goes to whether or not this com-

pany has "monopolized the benefits of these cheaper methods of delivery" as is charged by the complaint.

Trial Examiner Norwood: Proceed.

41030 By Mr. Withrow:

Q. Will you answer the question, Mr. Cole?

Trial Examiner Norwood: There was an objection made and the objection was sustained.

Mr. Withrow: You mean I am foreclosed. I am sorry. Your Honor, I offer to prove at this time that under the laws of the State of Ohio the truckers of cement are compelled to file contracts, including rate information.

41032 By Mr. Withrow:

Q. Well, Mr. Cole, would you tell us whether the contract truckers are required by the laws of the State of Ohio to file their trucking contracts showing their trucking rates?

Trial Examiner Norwood: Well, answer that as to the time prior to July 2, 1937.

A. Yes, sir.

41034 By Mr. Withrow:

Q. Now, what distance under the State statute are truckers allowed to operate, Mr. Cole?

A. What State do you have in mind?

By Mr. Withrow:

Q. Ohio.

A. Ohio. It is unlimited.

Q. And how about the distance in Michigan?

A. The same.

Q. And is that also true in Wisconsin, Mr. Cole?

A. No, sir.

41035 Q. Respondents' Exhibit 3295 is a document consisting of a cover, six numbered pages, and a one-page appendix entitled "Schedule A."

Mr. Cole, I show you Respondents' Exhibit 3295, and ask you to tell us what it is?

A. It is a contract on trucking of cement entered into between the Whittaker Trucking Company and the Medusa Portland Cement Company as of November 11, 1935, from its Silica, Ohio, plant to points of destination in Michigan.

Q. I show you, Mr. Cole, Respondents' Exhibit 3296, consisting of a cover, five numbered pages, and "Schedule A," and "Exhibit A," and ask you to tell us what it is?

A. It is an agreement as of July 15, 1937, covering trucking of cement; the agreement between the Whittaker Trucking Company and the Medusa Portland Cement Company; of cement trucked from its Silica, Ohio, plant to points of destination in Ohio as shown on Schedule A.

41043 (RESP. EX. 3295 a-h, was offered and received in evidence.)

41044 By Mr. Withrow:

Q. Are trucking rates, Mr. Cole, in the State of Michigan, filed with the Public Service Commission of Michigan?

A. Yes, sir.

Trial Examiner Norwood: Was that prior to July 2, 1937?

The Witness: Yes, sir.

By Mr. Withrow:

Q. Now, how did these rates that are on file in Michigan compare with the rail rate, Mr. Cole?

41045 A. They meet the rail rate to points of destination in Michigan on the same level.

Trial Examiner Norwood: Now, what time does that cover, where they meet the rail rate?

The Witness: Prior to the date of the complaint.

Trial Examiner Norwood: When did they begin filing them?

The Witness: 1932.

By Mr. Withrow:

Q. Mr. Cole, I show you Respondents' Exhibits 3299, 3300, 3302, 3303, and 3304, and ask you if they are all contracts between your company and your contract carriers?

A. Yes, sir.

Q. Now, do you assist in negotiating those contracts with contract carriers, Mr. Cole?

A. Yes, sir.

Q. And who files the contracts for these various States, you or the contractor?

A. The contract trucker.

Q. Does the Public Utility Commission of Ohio have the power to prescribe reasonable trucking rates?

41046 A. Yes, sir.

Mr. Withrow: Your Honor, I offer in evidence at this time Respondents' Exhibits 3299 through 3304, with the exception of 3301 (handing the documents to Commission's Counsel).

Trial Examiner Norwood: These contract rates here, do they contain the same rates that are on file with the State?

The Witness: Yes, sir. These contracts that I have just looked at, and which are offered in evidence, are on file with these various State commissions.

Trial Examiner Norwood: Yes.

Well, are other truck companies required to charge the same rate?

The Witness: No. We had separate negotiations in each contract.

Trial Examiner Norwood: Does that tend to bring about a uniformity of truck rates about which all shippers have notice?

The Witness: It is according to what State.

Trial Examiner Norwood: In the State that—.

The Witness: For instance, in Wisconsin, the trucking rates are higher than the rail rates.

Trial Examiner Norwood: I am not talking about that.

41047 The Witness: There is a uniformity there, however, in so far as the trucking rates are concerned, Your Honor.

Trial Examiner Norwood: Well, answer my previous question there:

Are they so filed, and these rates so handled by the State as to bring about a uniformity of truck rates throughout the State about which all shippers know?

The Witness: In Michigan and Wisconsin, I would say yes, sir.

Trial Examiner Norwood: That is not the case in Indiana, and Illinois?

The Witness: Well, in Ohio, it is more on the order of the Interstate Commerce.

A contract rate is not open for the public. It is a contract rate entered into by a shipper and contract carrier, and, so far, the Interstate Commerce Commission has not permitted the public to see those contracts.

41051 (RESP. EXS. 3299a-i, 3300a-n, 3302A-G and 3315 A-I, were offered and received in evidence.)

By Mr. Withrow:

Q. Mr. Cole, how does the level of the contract rates that you have in Michigan compare with that which you have in Ohio?

A. In Michigan the level is lower.

41055 The witness identified Resp. Ex. 3311 and 3312 as copies of contracts entered into by Medusa; Resp. Ex. 3313-A to C as a schedule which should be attached to Resp. Ex. 3312; Resp. Ex. 3310 as a contract entered into by the Manitowoc or Medusa Company with one of its contract truckers.

41057 (RESP. EXS. 3311A-J, 3312A-G and 3313-A to 3313-C, were offered and received in evidence.)

By Mr. Withrow:

Q. Now, Mr. Cole, how did the trucking rates which you have in Wisconsin compare with those in Michigan?

A. They are relatively higher in Wisconsin.

By Mr. Withrow:

Q. I believe you testified that they were higher than the rail rates?

A. Yes, sir.

The witness identified Resp. Ex. 3307 as a copy of a letter received by Medusa in the regular course of business from the Michigan State Highway Department.

41059 Washington, D. C.,
Thursday, June 13, 1940.

41060 GEORGE W. COLE thereupon resumed the stand and testified further as follows:

(RESP. EX. 3307, was offered and received in evidence.)

41069 By Mr. Withrow:

Q. Mr. Cole, I show you Respondents' Exhibit 3305, and ask you to tell us what it is.

A. It is a highway map of the eastern—or west-
41070 ern portion of Michigan, zoned in 10-mile blocks, from Holland, Mich., up to 120 miles, showing rates in cents per barrel for the transportation by truck of cement from Holland, Mich.

Q. And that is a silo of the Medusa Company?

A. Yes, sir.

Q. And are those rates contained up here the rates contained in the contract?

A. Yes, sir.

Q. And can you tell us when those contract rates were used or effective, as far as the Medusa Company was concerned?

A. They were effective in January of 1939.

Q. Were they effective prior to that time?

A. This basis of rates shown on here has been in effect for years in the State of Michigan.

Q. And the last contract was June, 1939?

A. Yes, sir.

Q. And I notice that the truck zones only go up to 120 miles, Mr. Cole. Would you explain why they only go that far?

A. The reason they are not extended beyond is because in the southern portion—that is, in the southeastern portion—we trucked cement from our Silica, Ohio, plant, and we have had no demand beyond the boundaries indicated on this map from our dealers for trucked cement.

Mr. Withrow: Your Honor, I offer in evidence at this time Respondents' Exhibit 3305 (handing document 41071 to Mr. Wooden).

Mr. Wooden: May I ask a question on voir dire?

Trial Examiner Norwood: Certainly.

Examination on Voir Dire by Mr. Wooden.

Q. You say these rates shown on this map were in effect for years. How many years do you mean?

A. It is my recollection, Mr. Wooden, that those rates had been in effect since 1932, not from Holland, however.

Q. How long have they been in effect from Holland?

A. June, 1939.

Q. Where were they in effect prior to June, 1939, if not from Holland?

A. A contract trucker—they were in effect from Newaygo, Mich., and Grand Rapids, Mich. As a matter of fact, this contract hauler had State-wide rights to haul cement, and that was his going basis.

Q. You do not mean to say that all the truck rates in

the State of Michigan were the same as those shown on this map in those zones, do you?

A. I did not say that.

Q. I say, you do not mean to say that?

A. Oh, no.

Q. As a matter of fact, you know they were not?

A. Oh, yes, I know that they were not. Truck-
41072 ing rates are not all the same in Michigan.

Mr. Wooden: That is objected to, Your Honor, as irrelevant and immaterial, and also incompetent, and for the special reason, I point out that it is based on a contract of last summer, subsequent to the complaint.

Trial Examiner Norwood: Does this represent the situation subsequent to July 2, 1937?

The Witness: Not from Holland. We just built a new silo there the early part of last year, and went into operation in June, 1939.

Trial Examiner Norwood: It does not represent it, or does it?

The Witness: I do not know what you mean by that.

Trial Examiner Norwood: Does this map represent the situation prior to or subsequent to July 2, 1937?

Mr. Withrow: I think I can clear it up for Your Honor with one or two questions.

Trial Examiner Norwood: Go ahead.

Direct Examination (Continued) By Mr. Withrow.

By Mr. Withrow:

Q. Mr. Cole, prior to July, 1937, did you contract with this same contract trucker from Newago or Grand Rapids?

A. Yes, sir.

Q. Was the rate basis the same or different than the rate basis shown on Respondents' Exhibit 3305?

41073 A. The rate basis was approximately the same as is shown on this map here, as I recall.

Q. In other words, in both instances the rates were based on a mileage zone scale?

A. Yes, sir.

Q. And, of course, the zones would not coincide?

A. No, sir.

Q. Because Holland and Newaygo are a little distance apart?

A. Yes, sir; that is correct.

Q. Was this contract entered into at the time of the establishment of your plant at Holland, Mich.?

A. Yes, sir. It was necessary to have a hearing before the Michigan Public Service Commission before this contract trucker could truck cement from our silo—from our Holland silo.

Mr. Withrow: Now, Your Honor, the reason for going into that contract is I want to show that as soon as and whenever the Medusa Company had a plant in an area where they found trucking competition, they immediately trucked. In this instance they had previously trucked, as Mr. Dawson testified, and as Mr. Cole has also testified, from Newaygo and Grand Rapids, which, as you will recall from the testimony, at the Newaygo mill was discontinued because it was not a satisfactory operation, and Holland is the substitute for the Newaygo mill, and both were on the western side of the State of Michigan, and 41074 also there is a reference to trucking from Holland in the testimony given by the Huron people, who testified, although it is Counsel for the Commission's contention that one Respondent cannot supplement or meet the proof of another Respondent; the law with reference to conspiracies is to the contrary, in our opinion.

Mr. Wooden: Your Honor, I call your attention to the fact that prices have not been based upon truck rates. They have been based on rail rates, and, therefore, this exhibit is irrelevant and immaterial.

Trial Examiner Norwood: But did he testify that some prices were based on truck rates?

Mr. Wooden: This witness does not know anything about prices, he said, and his predecessor, the vice-president of the company, testified, or there are exhibits and the stipulation is to that effect.

Trial Examiner Norwood: Well, then, how is this relevant? I think, according to the statement of Counsel, the objection should be sustained.

By Mr. Withrow:

Q. Mr. Cole, I show you Respondents' Exhibit 3306 and ask you if this is the order of the Michigan Public Utilities Commission with reference to truck rates which was referred to yesterday afternoon concerning the time that there was a request for a change in the truck rate scale in Michigan?

41075 Mr. Wooden: I object to the question as calling for irrelevant and immaterial matter.

Trial Examiner Norwood: Qverruled.

Mr. Wooden: It goes to the same point as the map just excluded.

Mr. Withrow: Why, this has nothing to do with the map whatsoever, and I do not know of any basis on which Counsel for the Commission can keep us from having documents identified so that when they are rejected we can use them on appeal in case the ruling is adverse.

Trial Examiner Norwood. Go ahead.

Mr. Wooden: I would not object if it were not a matter of taking up unnecessary time to have things marked and Counsel for the Respondent well knows that it is irrelevant and immaterial.

Trial Examiner Norwood: Go ahead.

Mr. Withrow: I would like to comment that this document was marked during recess and took up absolutely none of the hearing-room time at all, and I thought that there was an understanding—

Trial Examiner Norwood: Let us not have any more disussion about time. I hope counsel will not precipitate discussion and take up more time.

Go ahead.

The Witness: May I have the question read, 41076 please, Mr. Examiner?

Trial Examiner Norwood: Read the question.

(Question read.)

A. Yes, sir.

Trial Examiner Norwood: Now, that changed subsequent to the complaint.

Mr. Withrow: Yes, Your Honor.

The Witness: Yes, sir.

Mr. Withrow: And I would like to point out that on cross-examination, Mr. Dewey T. Meyers, of the Huron Company, was asked about this, and in our opinion did not correctly state the contents of the preceding matter, and it is our contention that if that matter is left in the record that we should be entitled to meet it. Now, orally, yesterday, we were excluded, but this document had been marked and I wanted it identified. I propose to offer it and if it is rejected I propose to move that portion of Mr. Meyers' testimony which appeared on cross-examination with regard to it—

Trial Examiner Norwood: Go ahead.

Mr. Withrow: I will now offer Respondents' Exhibit 3306 (handing document to Mr. Wooden).

Mr. Wooden: It is objected to as incompetent, irrelevant, and immaterial, and I would like to say that the matter to which Mr. Withrow referred to was cross-
41077 examination of Respondents' witness, to contradict him as to certain things that he had covered on direct.

Trial Examiner Norwood: The objection is sustained.

Mr. Withrow: I move to strike from the record at this time all the examination and cross-examination by Counsel for the Commission of the Huron witness, Mr. Dewey T. Meyers, with reference to the application for and hearings held by the Michigan Public Service Commission concerning the revision of trucking rates in the State of Michigan, it appearing that the application and all action taken pursuant thereto was subsequent to the date of the complaint, and on the further ground that when Counsel for the other Respondents attempt to meet that and show exactly what did take place that they have been foreclosured from so doing.

Trial Examiner Norwood: Will Counsel cite me the pages and lines of that so that I may look it up?

Mr. Withrow: I will do that, Your Honor. I could give you the page now, but not the lines.

41078 Mr. Withrow: I would like the Commission and Your Honor to take judicial notice of chapter 194 of the Wisconsin statutes, entitled "Motor Vehicle Transportation Act," the general order No. 2 of the Public Service Commission of Wisconsin, being rules of procedure and practice prescribed, and the Wisconsin statute relating to the Public Service Commission of Wisconsin and the regulations of railroads, appearing as chapter 190 of the Wisconsin statutes, 1933, 191, 192, 193, 194, 195, chapter
41079 32, 66, 75, 81, 87, 88, 89, 109, 120, 126, 182.

I have copies here which if Your Honor—

Trial Examiner Norwood: Let the Counsel have those marked for identification.

Mr. Withrow: I will be glad to.

(The documents were marked for identification "Respondents' Exhibits 3317, 3318, and 3319.")

Mr. Withrow: They are in bound volumes, Your Honor, as published by the State of Wisconsin in all instances.

Trial Examiner Norwood: Well, the Motor Vehicle

Transportation Act referred to is marked Respondents' Exhibit 3317; the Public Service Commission, Respondents' Exhibit 3318, and the Wisconsin Statutes were marked Respondents' Exhibit 3319. They are bound pamphlets, and need not be lettered.

Mr. Withrow: Your Honor, while the Reporter was marking the documents, I have checked my notations on the record, and I find that Mr. Dewey T. Meyers testified on record page 33522, and following, with reference to Docket D-3094, concerning an investigation by the Michigan Public Service Commission concerning the rates on cement, and that is the same subject matter as is contained in Respondents' Exhibit 3306, and concerning which I made an offer of proof, and concerning which Respondents' Exhibit 3306 was rejected, although that is the order 41080 and action of the Public Service Commission.

Mr. MacIntyre: If Your Honor please, my motion to strike the direct testimony on the subject of course relates to the exhibit that was placed in on the direct examination of that witness, and to which those questions in that part of the record on cross were directed.

Trial Examiner Norwood: Now, I want each Counsel to make a formal motion here, specifying the pages and lines he wishes struck. You may do that after you have had time to refer to the record, and I will know definitely what each wants.

Go ahead.

Mr. Withrow: Will you mark this, please, as Respondents' exhibit, for identification.

(The document was marked for identification "Respondents' Exhibit 3320.")

By Mr. Withrow:

Q. Now, Mr. Cole, does the State of Wisconsin, or the Public Service Commission of Wisconsin, have authority to fix the distance to which contract truckers can truck cement?

Mr. Wooden: That is objected to as irrelevant and immaterial.

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Wooden: As I said many times, the issues 41081 here are not what the public regulating authorities of the States have done, but what these Respondents have done.

Mr. Withrow: Your Honor, there appear in evidence a certain number of documents which refer to the distance to which trucking was allowed in the State of Wisconsin. The inference which Counsel for the Commission has attempted to draw in some of their cross-examination has been that that distance was the result of some agreement among cement companies. It appears that the distance was the result of the regulations by the Public Service Commission of Wisconsin, and I propose to show through this witness those regulations and the fact that he opposed them and had cases brought against the State of Wisconsin because they were restricting the area in which he trucks. Now, nothing could be more material and relevant to meet the inference which Counsel for the Commission have attempted to draw by their cross-examination and which they apparently contend, are contained in these letters which they have received in evidence, and we want to explain why and how the distance to which trucking existed in Wisconsin was arrived at.

Trial Examiner Norwood: Well, now, is that Wisconsin or Michigan?

Mr. Withrow: We are now talking about Wisconsin.

Mr. Wooden: I wish to direct Your Honor's at-
41082 tention to the fact that these exhibits, as implied by Mr. Withrow's reference to cross-examination, were Respondents' exhibits put in over our objection, and even when on cross-examination we tried to find out what the underlying facts are as to the inferences that they seek to draw from the exhibit, why, then, they come back and we are just fighting it out on this collateral issue that will take 40 years if you allow them to go into everything they want to go into.

Mr. Withrow: Mr. S. T. Crapo was never a witness for this Respondent, and no exhibits were offered that I recall when Mr. Crapo was on the witness stand.

Mr. Wooden: Whose cross-examination?

Trial Examiner Norwood: Well, I will overrule the objection at the present time.

Mr. Withrow: Whose cross-examination? Why, the Trial Examiner ruled in this proceeding that any Respondents' witnesses could be cross-examined by you instead of by having the orderly direct examination, that they were per se hostile witnesses; and that your examination was in the nature of cross-examination.

Trial Examiner Norwood: Well, I do not know that I made that statement that they were per se hostile witnesses.

Mr. Withrow: In the nature of.

41083 Trial Examiner Norwood: Where the interests were adverse, that is the rule, and it is the fair rule.

Mr. Withrow: Well, perhaps I should have used "adverse" instead of "hostile."

Trial Examiner Norwood: Yes.

Go ahead.

The Witness: May I have that question read, please, Mr. Examiner?

Trial Examiner Norwood: Read the question.

(Question read.)

A. Yes, sir.

By Mr. Withrow:

Q. And have they ever exercised that authority?

A. Yes, sir; many times.

Q. What restrictions did they put on the Medusa Company from its Manitowoc plant and its Milwaukee silo?

41084 A. They were restricted to 65 miles as the maximum distance from Milwaukee, and 70 miles as the maximum distance from Manitowoc in the marketing of our cement by truck.

Q. Did the Medusa Company and the Manitowoc Company ever oppose this restriction?

A. Yes, sir.

By Mr. Withrow:

Q. What steps did they take?

A. We intervened in support of a complaint filed with the Public Service Commission of Wisconsin by several of our contract truckers.

Q. Now, did any of the companies with whom you came in competition have contracts with contract truckers, Mr. Cole?

A. Yes, sir. I gained that information, of course, through their appearance at these hearings.

Q. Do you know whether or not they were restricted to a given territory from the location of their plants?

A. Yes, sir.

Q. Now, would you tell us what effect that had on
41085 the destinations to which you could truck,—could you truck to all the points where your competitors could truck to?

A. No, sir; we could not.

Q. And would you look at Respondents' Exhibit 3320, and list for us the number of points at which the Medusa Company had dealers that requested trucking which was beyond the trucking area where you could truck?

Mr. Wooden: Is this exhibit in evidence?

Mr. Withrow: It is not in evidence. If you want it—

Mr. Wooden: Well, I object to any testimony drawn from the pending exhibit, which is not offered in evidence.

Trial Examiner Norwood: Why, he may refresh his recollection.

A. We were denied the privilege of trucking to customers at various points in Wisconsin beyond 70 miles from Manitowoc, such towns as Antigo, Birnamwood, White Lake, Neopit, Bowler. Those are typical destinations in that territory.

By Mr. Withrow:

Q. And did you ever bring that matter to the attention of the Public Service Commission of Wisconsin?

41086 A. Yes, sir.

Q. And what was the result of the application for the extension of your trucking territory where you could truck from Manitowoc, Mr. Cole?

A. It was approved and allowed by the Public Service Commission of Wisconsin.

Q. Prior to this action by the Public Service Commission, was the territory to which the Manitowoc or the Milwaukee silo trucked limited in any way by agreement with competitors of the Medusa Company?

A. No, sir.

Q. Mr. Cole, Mr. Meyers of the Huron Company testified about the Leicht Transfer & Storage Company case before the Public Service Commission of Wisconsin. Are you familiar with that case?

A. Yes, sir.

Q. Mr. Cole, I show you Respondents' Exhibit
41087 3321-A to E, for identification, and ask you to tell us what it is.

A. This Respondents' Exhibit 3321-A to E is an order

of the Public Service Commission of Wisconsin running to an application of the Leicht Transfer & Storage Company of Green Bay, Wis., to transport cement for the Limestone Products Company and the Huron Portland Cement Company, and for all other manufacturers of cement within a hundred miles of Green Bay.

Mr. Withrow: Your Honor, we offer in evidence at this time Respondents' Exhibit 3321-A to E, inclusive. It is an order subsequent to the date of the complaint in April, April 20, 1938, but here, again, Mr. Meyers, of Huron, was asked to testify about this specific case, and we would like to have the record show what the order was and what the application was, and what the basis of the action of the Public Service Commission of Wisconsin was. This is the order (handing document to Mr. Wooden).

Mr. Wooden: The offer is objected to as incompetent, irrelevant, and immaterial, and for the special reason that it is subsequent to the issuance of the complaint, and for the further special reason that it is irrelevant and immaterial because it is nothing but an effort to spin out and build upon and explain other irrelevant and immaterial matter which went into the record over our objection.

41088 Trial Examiner Norwood: The objection is sustained.

Mr. Withrow: On the basis of Your Honor's ruling, I move to strike at this time that portion of the testimony of Dewey T. Meyers, referring to the case of the Leicht Transportation Company, which was received in evidence, and I will be glad to specify the pages and lines this afternoon or tomorrow.

Trial Examiner Norwood: Yes. Do that.

Mr. Withrow: Can I assume, Your Honor, from Your Honor's ruling, that I would also be foreclosed from going into this matter on oral examination, so that I can save the hearing room time of asking the questions, objecting, and arguing it out,—going orally into it?

Trial Examiner Norwood: I do not know how to answer that. You ask your question and then we will consider it. I think that before we go into these matters further it will have to be made clear to me just where it affects the issues. I have tried very hard to see it, and I have given the Respondents the benefit of any possible doubt as to relevancy, so that if you are going into those things,

41089 why, be prepared to explain to me where they are of any value to the case.

Go ahead.

The witness identified Resp. Ex. 3322 as a list of destinations outside of the area where "we" could truck from Manitowoc or where "our" customers demand trucks, showing the distance of the haul from Manitowoc; Resp. Ex. 3323A-B as representing the estimated tonnage in the trucking area beyond seventy miles that is served to the towns in the previous exhibit from Manitowoc; Resp. Ex. 3324 as a letter, dated June 12, 1937, from the Public Service Commission of Wisconsin, addressed to the Clipper City Transport Company at Manitowoc, Wisconsin.

41090 That letter modified the rate or affected the rate which "we" had in "our" contract with the Clipper City Transport Company. He further identified Resp. Ex. 3325 A-E as a trucking statement for the year 1936, showing the total amount of cement trucked from Manitowoc during the calendar year 1936 to points of destination in Wisconsin; Resp. Ex. 3326 as a statement of the truck deliveries beyond seventy miles from Manitowoc during the calendar year 1937, showing the relation, the percentage of the total, that was trucked during that year from Manitowoc. He vouches for the accuracy of Resp. Exs. 3323, 3325, and 3326.

41091 Mr. Wooden: The documents offered are objected to as irrelevant and immaterial junk.

Trial Examiner Norwood: Will you explain to me what these show with respect to the issues of the case?

Mr. Withrow: Counsel for the Commission has attempted to draw certain inferences that the Medusa Company refused to truck beyond 70 miles in Wisconsin. I want to show to what extent it in fact did truck beyond, and the fact that it took steps that were necessary to truck beyond, even under the difficult conditions imposed by the State of Wisconsin, to-wit, actual leasing of trucking equipment and operating—

Trial Examiner Norwood: And you want to show that it was impracticable and unprofitable to truck beyond?

41092 Trial Examiner Norwood: Hasn't it been shown abundantly in here that it was not profitable to truck beyond 50 miles? Why, your clients have told us that. They were Commission's witnesses, but they told us that on cross-examination, and do you think it requires you to go to all this trouble to put in all these documents to show why he did not truck beyond 70 miles from his plant?

Mr. Wooden: I say, Your Honor, it is an illustration of what Respondents have done again and again. They have put in one line of testimony by one witness and an
41093 opposite line by another, and they have done it even with witnesses from the same company.

Trial Examiner Norwood: I do not know that it was their witness. I do not recall. It may have been, but in my judgment there is absolutely no issue as to whether Respondents agreed on 70 miles limit on trucking.

Mr. Withrow: If Mr. Wooden is willing to concede at this time that there was no agreement between any of the Respondents to limit the extent of trucking to 70 miles, to 65 miles, or any other number of miles in the State of Wisconsin—

Trial Examiner Norwood: Wait a minute. We are talking about 70 miles territorial distance limit.

Mr. Withrow: Yes. But there were different distance limits set by the State of Wisconsin. At one time it was 65, and one time 70, and another time it was based on a county line, and if he is willing to concede now that the Respondents have not agreed to so restrict trucking in the State of Wisconsin, and that is where we are addressing ourselves to,—we won't go into this line. We are only attempting to meet the inferences we feel they are going to attempt to draw from the documents; otherwise, the documents should not have been received in the first place.
41094 Trial Examiner Norwood: If Respondents insist on putting this in, and insist that there is such an issue, I shall receive it.

The objection is overruled.

(RESP. EXS. 3322, 3323-A, 3323-B, 3324, 3325-A to 3325-E, and 3326," were offered and received in evidence.)

By Mr. Withrow:

Q. Mr. Cole, do you recall an emergency increase, Ex Parte 123, in March, 1938?

A. Yes, sir.

Q. Do you recall when that increase became effective on interstate commerce in the State of Wisconsin?

A. As near as I remember, it was March 28th.

Q. Now, that was on interstate business. Could
41095 you tell us when it became effective on intrastate business?

A. I think it was some time later. I do not know the exact date, Mr. Withrow.

Q. I show you Respondents' Exhibit 3327, and ask you if you had that document prepared?

A. Yes, sir.

Q. Can you vouch for its accuracy?

A. Yes, sir.

Q. Can you refresh your recollection, Mr. Cole, from that document as to when that increase became effective on intrastate business in Wisconsin?

A. It became effective on May 24, 1938.

41098 Q. Mr. Cole, do you recall whether or not the Medusa Company has ever stamped bills of lading with a provision about diverting cement?

A. Yes, sir.

The witness identified Resp. Ex. 3229 A-K inclusive, as documents representing a complete bill of lading set to be used to transport a carload of cement from Bay Bridge, Ohio to Sandusy, Ohio; Resp. Ex. 3329-A as the
41099 original bill of lading which the agent signs and we retain in our general office; Resp. Ex. 3329-C as a shipping order of the bill of lading retained by the railroad agent for shipping purposes; Resp. Ex. 3329-E as a memorandum bill of lading retained by Medusa's Shipping Department at the Bay Bridge plant; Resp. Ex. 3329-G as a memorandum of the bill of lading which is sent to the customer; Resp. Ex. 3329-I as the part sent to the Accounting Department; Resp. Ex. 3329-J as the part sent to the district sales office; Resp. Ex. 3329-K as the part sent to the salesman in that respective territory. The shipment referred to was on February 6, 1940. These forms have been used and this procedure followed for over ten years.

41100 *Examination on Voir Dire by Mr. Wooden.*

Q. Mr. Cole, I understand you to say that this form represented by Respondents' Exhibit 3329-A, for identification, has been in use by your company for some 10 years?

A. Yes, sir.

Q. How long has the stamp contained on the paper-writing "This is the property," etcetera, been used on the form?

Mr. Withrow: Your Honor, I object to the question. That is cross-examination, and if Mr. Wooden will bear

with me just a little I plan to go into it on my direct.
41101 It has nothing to do with the materiality and relevancy of the document.

Trial Examiner Norwood: The objection is overruled. I think it does.

A. I think it was in the early part of 1935 that we started to use the stamp.

By Mr. Wooden:

Q. Was it before or after May, 1935?

Mr. Withrow: Your Honor, I make the same objection.

Trial Examiner Norwood: Overruled.

A. I think it was some time during May, if I recall, we started using it.

(RESP. EX. 3329-A and 3329-B, was offered and received in evidence.)

The witness identified Resp. Ex. 3331 as a memorandum which he had prepared and sent in the regular course of business; Resp. Ex. 3332-A as a copy of a bill of lading from Medusa's office. The handwriting on the face of the memorandum is that of Mr. F. W. Carstens, Medusa purchasing agent. From these two documents he would say that May 17, 1935 was the date on which Medusa first stamped a bill of lading with the stamp concerning the diversions.

41102 (RESP. EX. 3331, was offered and received in evidence.)

41103 Q. Mr. Cole, do you recall under what circumstances the Medusa Company started to stamp its bills of lading?

A. As I recall, the early part of 1935 several railroad traffic officials, particularly Mr. B. R. Brennan, assistant freight traffic manager of the New York Central, in discussing routine business, told me that various industries such as brick, lime, plaster, lumber, iron, and steel were using a stamp on their bills of lading as a matter of protection to themselves to prevent diversions of their cars in transit, and I became curious, and naturally interested, because it appeared to me to be a good thing to use as a matter of protection to our shipments, and upon a little further investigation through several railroads I found that that was the fact. That is about the background of my reason for the use of the stamp.

Q. Mr. Cole, would you tell us what the traffic reason is for stamping a bill of lading instead of having a
41104 provision in the bill of lading itself?

A. You mean the stamping?

Q. I mean puting the "No Diversion" stamp on it.

A. Well, ordinarily, on a collect shipment the railroads consider that that is the property of the consignee, and at least that is my understanding of it. Now, by the use of this stamp we have been safeguarded in that the railroads consider the property that we offer them for transportation is our property.

Q. When you took this action, did you take into consideration any provisions of the bill-of-lading act?

A. Yes, I did. I recall that I made a very careful study of section 10 of the bill-of-lading act.

Mr. Withrow: Your Honor, I request that Your Honor and the Federal Trade Commission take judicial notice of the uniform bill-of-lading act, especially section 10 of that act.

Trial Examiner Norwood: Is that the proper citation for that? Can it be found from that?

Mr. Withrow: Yes, Your Honor. It has been adopted in the federal statutes. I do not know what section it is, but it can be found. It was a proposal by the committee on uniform laws, uniform commercial laws, and it is referred to as the Uniform Bill of Lading Act. The section concerns the liability for unlawful delivery.
41105 it is in all of the textbooks and treatises on negotiable instruments, Your Honor.

Q. Now, was this practice of the Medusa Company of stamping bills of lading adopted pursuant to any agreement with any of Medusa's competitors?

A. No, sir.

Q. And has the Medusa Company continued to use that stamp since that time?

A. Yes, sir; on every shipment of cement.

Q. Now, have there been diversions of shipments since Medusa Company used this stamp?

A. Yes, sir.

Q. And what are the instructions of the Medusa Company with reference to handling such matters, do you recall?

Q. Well, I mean in the event of such diversion what has

been the practice of the Medusa Company with reference to that matter after you learned of the diversion?

A. If the matter is called to my attention, and there are damages resulting incidental to that diversion, I file a claim with the responsible railroad.

Q. And as a matter of procedure are the em-
41106 ployees of the Medusa Company supposed to call this matter to your attention?

A. In every instance, Mr. Withrow.

Q. Now, Mr. Cole, I show you Commission's Exhibit 546-2-G, for identification, which has been marked Respondents' Exhibit 3334, for identification, and ask you if that memorandum ever came to your attention?

A. Yes, sir.

Q. Do you recall the incident referred to in the memorandum?

A. I do now since I have read this memorandum.

Q. Now, Mr. Cole, I will show you Respondents' Exhibits 3335 through 3349, for identification, having all been previously marked as Commission's Exhibit 546, and they are respectively R, S, T, U, V, W, Z, 2-A, 2-B, 2-C, 2-E, 2-F, 2-D, 2-H, X, Y, and J, and ask you to tell us if these are the communications, either inter-office communications of the Medusa Company or communications with railroads and dealers surrounding this same incident referred to in Commission's Exhibit 546-2-G, for identification?

41107 The Witness: This is my complete file on the matter in question.

By Mr. Withrow:

Q. Well, would you explain to us, Mr. Cole, briefly, just what took place in this incident where the dealers involved were located, where the shipment went and just what the situation was?

A. Well, for the information of the Examiner, there was no refund involved in this case. This fas a damage,—I am not speaking about damaged goods,—this was a damage incurred by a dealer of ours at—

Trial Examiner Norwood: Do the papers show all those circumstances?

The Witness: Yes, sir.

By Mr. Withrow:

Q. Well, where was the dealer that diverted located, Mr. Cole?

A. The dealer that diverted the car was located at Thomasville, N. C.

Q. And where did he divert it?

A. It was diverted to High Point, N. C.

41108 Q. Did Medusa have a dealer at High Point?

A. Yes, sir.

41109 *Examination on Voir Dire by Mr. Wooden.*

Q. Mr. Cole, do all these papers that are pending on Mr. Withrow's offer, beginning with Respondents' Exhibit 3334 through 3349, do they all relate to the same transaction as is represented by Commission's Exhibit 546-K, L, M, N, O, P, and Q?

41110 A. Yes, sir.

By Mr. Wooden:

Q. And they are all—both the Respondents' exhibits that I have shown you, and the Commission's exhibits I have shown you—they are all equally authentic documents, are they?

A. Yes, sir.

Q. And documents the authenticity of which you vouch for?

A. Yes, sir.

Mr. Wooden: I think the papers contain some unnecessarily cumulative and immaterial matters, but I will make no other objection.

Trial Examiner Norwood: The exhibits may be received as marked—that is, Respondents' Exhibits 3334 to 3349. They are received in evidence.

(RESP. EXS. 3334, 3335, 3336, 3337, 3338, 3339,
41111 3340, 3341-A, 3341-B, 3342, 3343, 3344, 3345, 3346, 3347, 3348-A, 3348-B, and 3349, were offered and received in evidence.)

By Mr. Withrow:

Q. Mr. Cole, do you ever attend Cement Institute meetings?

A. No, sir.

Q. Do you recall ever having attended any Institute meeting?

A. No, sir.

Q. Mr. Cole, are you familiar in a general way with the rates to points in Ohio from Toledo and from Silica?

A. Yes, sir; on cement.

Q. Yes, on cement, that is right.

A. Yes, sir.

Q. Would you state briefly how the rates from these two points compare?

A. They are comparable. The two points of origin are about 8½ miles apart in their relationship to business moving either North, East, South, or West, and under the present scale of rates, the rates are generally uniform except when you might get up into distances over 200 miles, and then you are in the 30-mile block, and one origin might fall in the other, which would result in perhaps a half a cent or a cent difference in the rate per 100 pounds, but, generally, the rates are comparable.

41112 Q. And which usually has the higher rate, Mr. Cole?

A. Silica.

41114 Q. Mr. Cole, have you ever been a member of the Transportation Committee of the Portland Cement Association?

A. Yes, sir.

Q. And has that committee been very active?

A. No, sir.

41115 Q. Did, to your knowledge, that committee ever take up any matters concerning what the rates for the shipment of cement should be, or anything concerning the publication of rate books or rate information, Mr. Cole?

A. Never, to my knowledge.

Q. Was there any discussion at those committee meetings of sales or marketing problems?

A. No, sir.

Q. Was there any agreement entered into at meetings of the Transportation Committee concerning the question of whether or not all-rail transportation should be used in the shipment of cement?

A. No, sir.

Q. Mr. Cole, have you made an investigation of the history of the minimum carload weights of cement shipped from your plant at Bay Bridge, Ohio?

A. Yes, sir.

Q. Mr. Cole, can you recall without referring to any document the details of this history?

41116 A. Yes, sir. I examined the records of the New York Central Railroad in their general offices as to the minimum weights applicable on cement dating back for many years, and the records I saw went back to 1896, and I was able to secure information as to the changes from then on up to the present time in the minimum weights on cement in carload lots in the so-called—well, I would say from our plant at Bay Bridge.

Q. Now, Mr. Cole, when you refer to these records of the New York Central, what were they?

A. They were the official records certified to by the Interstate Commerce Commission.

Q. That is tariffs on file?

A. Yes, sir.

Q. Now, I will show you Respondents' Exhibit 3196-G, and ask you to state briefly what the changes, or outline the history of minimum carload weights at Bay Bridge, from 1896 to date, giving the appropriate I.C.C. numbers so that Counsel for the Commission can check, if necessary.

41119 A. Not only cover Bay Bridge, but they cover the entire territory east of the Mississippi River to the Atlantic Seaboard. I.C.C. A-251, which became effective on September 2, 1896, provided for a mimimum weight of 28,000 pounds for shipments of cement from Bay Bridge, Ohio, to various destinations. This was increased to 30,000 pounds on February 1, 1899, and remained in effect until Februpary, 1900, when the minimum weight was increased to 38,000 pounds provided subject to the market capacity of the car, but in no case would the minimum be less than 30,000. The 38,000 pounds remained in effect until January 11, 1907, at which time minimum weights of 50,000 pounds was provided for unless the marked capacity of the car was less, but in no case was the minimum to be less than 30,000 pounds. Then on June 18, 1910, the minimum weight of 50,000 pounds was provided, but in no case would the minimum be less than 40,000 pounds. Now, that minimum weight was continued in effect until January 5, 1924, at which time the minimum of 50,000 pounds marked capacity of the car if less to cover was established, and this minimum weight established on January 5, 1924, has continued until the present day.

41120 By Mr. Withrow:

Q. Mr. Cole, does the Medusa Company have a dealer at Hampstead, N. H.?

A. I do not recall that we do, just offhand now. We might have.

Q. Well, could you tell me whether or not you had the records of the Medusa Company checked to determine whether or not you have a dealer at Hampstead?

A. It seems to me I did.

Q. Do you recall what the check showed, Mr. Cole?

A. The records showed that there had been no shipments made to that town.

Q. Now, did you check, Mr. Cole, the records from York, Pa., to Hampstead, N. H.?

A. Yes, sir.

Q. And was the result of your check incorporated in a stipulation marked "Respondents' Exhibit 3196"?

A. Yes, sir.

Q. Could you recall offhand the history of the 41121 rate between York and Hampstead?

A. Why, I checked that rate about a year ago and it was necessary for me to secure a tariff. It was a canceled tariff, and I had to secure it from the Pennsylvania Railroad. As I recall, the tariff was I. C. C. either 1600 or 2600, and the point was on the Boston & Maine, or a subsidiary, the Boston & Maine Transportation Company. It was necessary to add an arbitrary there of 75 cents a ton to create a rate, a through rate, from York, Pa., of 26½ cents per hundred pounds.

Q. Now, Mr. Cole, I will show you Respondents' Exhibit 3196, and ask you if you can refresh your recollection and give the supplement and tariff numbers and the day of change which you found when you made the check?

A. Yes. This refreshes my memory here. I recall using Supplement No. 22 to Pennsylvania Railroad tariff, I. C. C. 1622, effective June 15, 1937.

Q. What did this supplement do with reference to the rate to Hampstead, N. H.?

A. It canceled Hampstead, N. H., as a Boston & Maine station and added the station as a station 188 on the Boston & Maine Transportation Company, to which at that time there was a rate of 21 cents, and, of course, there was a prefix in there with a circular reference, No 38, that

provided that the rate applied only when other than
41122 in bulk and was subject to an additional charge of 75 cents per net ton of 2,000 pounds, which would result in a through rate of 25¼ cents per 100 pounds from York, Pa., to Hampstead, N. H.

Q. Now, did you also check Supplement No. 33 to Pennsylvania Railroad tariff, I. C. C. 1622?

A. Yes, sir; I did, and that supplement became effective November 15, 1933, under Ex Parte 115. This increased the 21½ basic rate to 22½ cents, but no change was made in the additional charge which resulted in a through rate of 26¼ cents per 100 pounds.

Q. Did you also check supplement No. 39 to I. C. C. tariff 1622?

A. Yes, sir; I did, and I found that that was effective March 28, 1938, and it reflected the Ex Parte 123 advance of 1 cent—I mean 10 percent—which increased the basic rate from 22½ cents to 24 cents, and it incidentally increased the additional charge from 75 cents to 83 cents, making a through rate of 28.15 cents per 100 pounds.

41123 By Mr. Withrow:

Q. Mr. Cole, could you tell us whether or not the Medusa Company has made any shipments to Manchester, Minn., since around 1934?

A. I recall checking on that with our sales people, and I can find no record of any shipments made of cement to Manchester, Minn.

Q. Mr. Cole, I show you Respondents' Exhibit 3351, and ask you if that was prepared by the traffic department of the Medusa Company.

A. Yes, sir.

Q. You vouch for its accuracy?

A. Yes, sir.

Q. And I notice in the first column is a list of destinations; the next is railroad; and the next is the index. Will you explain what that index is intended to refer to?

A. The index—the numbers appearing under the column marked "Index" is the number of the destination points in the tariff mentioned on the statement.

41124 Q. And is the tariff referred to this tariff which is in the caption up here (indicating)?

A. Yes, sir.

Q. Now, Mr. Cole, I show you Respondents' Exhibit

2331, and ask you to look at it and tell us whether or not the freight rates contained on the face of that document are correct.

A. Yes, sir; they are correct.

Mr. Withrow: Your Honor, we offer at this time Respondents' Exhibit 3351 and re-offer at this time Respondents' Exhibit 2331 (handing documents to Commission's Counsel).

Examination on Voir Dire by Mr. Wooden.

Q. Mr. Cole, referring to Exhibit 3351, for identification, can you fix the time or period when those rates were in effect?

A. These rates were in effect—the basic rate was in effect since 1924, subject to the emergency increases, and plussed by the present permanent increase in Ex Parte 123.

Q. Can you tell me when those rates on that paper, without regard to whether they are basic rates or emergency rates, or what not, what period they were in effect?

A. I just told you, Mr. Wooden, that the rates appearing as basic rates have been in effect for years prior to 1937.

41125 Q. Well, then, do you say that the rates shown on this paper were in effect for years prior to 1937?

A. I say that the rates shown under the basic rate were in effect prior to 1937, and the rates shown in the last column are the present rates, and these present rates in the last column have been—were increased in 1938 due to the general increase under Ex Parte 123.

Q. Other than that, do you say the rates shown on the paper were in effect for years prior to 1937?

A. With that qualification, I say they were; yes, sir.

41127 Mr. Withrow: Your Honor, I would like at this time to ask Your Honor and the Federal Trade
41128 Commission to take judicial notice of Tariff Circular No. 20, Rule No. 64, entitled "In Absence of Routes, Rates Apply Via Lines Parties to Tariffs," appearing on page 90 of the Administrative Rules of the I. C. C., as approved on June 11, 1928.

Trial Examiner Norwood: Mark it for identification.

(The document was marked for identification "Respondents' Exhibit 3355.")

Mr. Withrow: The rule appears on page 90 of this document.

And at the same time I would like to ask you to take judicial notice, and have the Commission take judicial notice, of Supplement No. 5 to Tariff Circular No. 20, issued by order of the I. C. C. on June 18, 1937.

Have that also marked.

(The document was marked for identification "Respondents' Exhibit 3356.")

41131 (RESP. EXS. 3352-A to 3352-C, 3353-A to 3353-P, and 3354-A to 3354-P, were offered and received in evidence.)

41132 By Mr. Withrow:

Q. Mr. Cole, I show you Respondents' Exhibit 3223, which has been received in evidence, and ask you if those are the emergency changes which would affect and change the basic rates contained on Respondents' 3351, which has just been received.

A. Ex Parte 103 and 115 would change the basic rate temporarily prior to March 28, 1938, but Ex Parte 123 then makes the permanent rate, the present rate shown there.

41133 *Cross-Examination by Mr. Wooden.*

Q. Mr. Cole, will you identify for me,—state whether or not it is your letter that is in evidence as Commission's Exhibit 1675-A and B?

A. Yes, sir.

By Mr. Wooden:

Q. Now, Mr. Cole, I understood you to testify on direct that in your activities in connection with the railroads on this short-haul rail reduction matter that you had no purpose or thought of eliminating truck competition; is that correct?

A. That is right; yes, sir.

Q. Did you not say in this Exhibit 1675-A and B, that you just said was your letter, that the principal reason for proposing this schedule of short-haul rates is to minimize trucking (showing the document to the witness)?

41134 A. That is a statement I make in this paragraph, but your question to me is whether or not I wanted to eliminate trucking.

Q. All right. Now, you distinguish between minimizing and eliminating.

A. Yes.

Q. In other words, you did want to minimize but you did not want to eliminate; is that it?

A. I did not want to do either. That was an idea that I was trying to convey to Mr. Kanageiser to go along on my proposition.

Q. You mean to say that it was not true?

A. I was just giving him a sales argument.

Q. You mean to say that it was not true?

A. I do not mean to say it was not true.

Q. All right, it was true, wasn't it?

A. I mean to say that I was trying to convince Mr. Kanengeiser that if he would go along in this proposal there would be—trucking would be minimized. There is no question about that.

Q. Didn't you tell him that the principal reason for proposing this schedule of short-haul rates was to minimize trucking?

A. Yes, sir; that is true.

Q. You told him the truth, didn't you?

A. Sure.

Q. Now, what distinction do you draw between
41135 minimizing trucking and eliminating trucking?

A. Oh, there is quite a distinction there.

Q. If you minimize a thing to the point where there is practically nothing left, haven't you just about eliminated it?

A. No.

Q. Now, I show you Commission's Exhibit 1743-A and B. That is your letter, isn't it (showing the document to the witness)?

A. Yes, sir.

Q. Didn't you say in that letter that a certain meeting was called for the purpose of devising ways and means of eliminating trucking of cement?

A. Yes, sir; I make that statement in this letter.

41136 Q. Wasn't it true?

A. No, sir.

Q. You told the man an untruth?

A. No, sir; I did not.

Q. Well, then, it was true?

A. I do not know whether it was true or not. This in-

formation was given me, and I was simply passing it on to Mr. Guy.

Q. Where did you get it?

A. As I recall, Mr. Wooden, I was advised that there was a meeting called by the railroads inviting dealers' representatives to attend the meeting, and several railroad people told me about this meeting.

Q. In other words, you believed it to be true when you passed it on in that form?

A. Well, I do not know whether I believed it at that time or not, but I passed the information on.

Q. You had information at the time you were carrying on these activities that there was a move on to eliminate trucking, didn't you?

A. No, sir.

Q. You had the information when you wrote that letter, didn't you?

A. I had meagre information; yes, sir.

Q. You did not question the truth of it when you passed it on, did you, or when you received it?

41137 A. I did not give it much consideration, Mr. Wooden.

By Mr. Wooden:

Q. I notice Exhibit 1743-A, to which I have just called attention, you sent a copy of it to Mr. J. B. John.

A. Yes, sir.

Q. Who is he?

A. He is the president of the Medusa Portland Cement Company.

Q. You mean to say, Mr. Cole, that you did not know from information received from the officers of your own company that there was a move on to eliminate trucking of cement at the time?

A. Absolutely I did not know.

Q. You did not know?

A. No, sir.

Q. You did not know that Mr. MacFarland, of your company, was attending meetings at which the elimination of trucking of cement was being considered and discussed?

A. I heard after Mr. MacFarland attended one 41138 meeting, and he told me about attending the meeting. That is all I know about it. I do not know of him attending any other meetings.

Q. What did he tell you?
A. Just—
A. He told me he attended the meeting.
By Mr. Wooden:
Q. Is that all he told you?
A. Yes, sir.
Q. Did he tell you what the meeting was about?
A. No. He said it was just a meeting called by the railroads in connection with some matters they wanted to discuss with dealers, and he was invited by the dealers.
Q. You do not mean to say, do you, Mr. Cole, that Mr. MacFarland was not advised of your activities in connection with the railroads on this short-haul rate reduction?
A. Not to my knowledge, unless he received a
41139 copy of a letter that I might have written. Outside of that, I never discussed my activities with the railroads with him.
Q. Did you know that at that time Mr. MacFarland was president of The Cement Institute?
A. I do not know whether I did or not. I never paid much attention to these committees or Institute—Cement Institute matters did not concern me at all.
Q. Did you get copies of the minutes of those meetings of the railroads and cement shippers?
A. What meetings are you talking about?
Q. Any of them.
A. I received a copy of a meeting that I attended.
Q. Any others?
A. No, sir; not that I recall.
Q. Referring again to Commission's Exhibit 1743-A, your letter to Mr. Guy, directing your attention to the statement that after this meeting, to which I have previously directed your attention, you had information,—you were told that the railroad traffic executives would welcome a suggestion from the traffic managers of the cement companies for a revision in the cement rates to short-haul rates if it would materially assist in eliminating trucking—
A. Well, that does not state there that I received—
Q. I have not asked you a question yet.
A. You certainly did.
41140 Trial Examiner Norwood: Let him finish the question.
Mr. Withrow: Let the witness finish the answer. He was stopped. A great number of Mr. Wooden's questions are just in that form.

Trial Examiner Norwood: Read the record.
(Record read.)

By Mr. Wooden:

Q. Now, my question is this:
You went ahead after having that information from the railroad companies and conducted this campaign to get lower short-haul rates knowing that the railroads would welcome it if it would materially assist in eliminating trucking; isn't that correct?

41141 A. No, sir.

By Mr. Wooden:

Q. Well, isn't it a fact that after February, 1932, after the date of that letter, you did conduct this short-haul reduction campaign?

A. I was conducting that investigation of mine since 1930.

Q. Didn't you continue it after February, 1932?

A. Yes, sir; I did.

Q. And you contend that you did not know that the railroads would welcome it if it would materially assist in eliminating trucking?

A. I might have mentioned that in my letter to Mr. Gay.

Q. And yet you say that you had no thought or intention of eliminating trucking in your short haul rate reduction campaign?

A. I was not concerned with the trucking—the elimination of trucking. I was interested only in securing short haul rates for the Medusa Cement Company.

Trial Examiner Norwood: You wanted short-haul rates that were as low as the trucking rates; is that correct?

The Witness: If they could have made them lower than that I would have been tickled to death.

41142 By Mr. Wooden:

Q. Now, I direct your attention to Commission's Exhibit 1701. That is also your own letter, isn't it (showing the document to the witness)?

A. Yes, sir.

Q. I direct your attention to your own language in that letter: "Our two Ohio plants will not benefit in any large consuming markets under the proposed rate revision up to 50 miles, but if these rate reductions materially help in

eliminating trucking, we feel that a great deal will have been accomplished for the cement shippers in the territory involved."

Now, do you say now, in the face of your own language in that letter, that you had no intention or thought of eliminating trucking in your rate reduction campaign?

A. Absolutely I did not, Mr. Wooden. I am a traffic manager, and I was only interested in getting short-haul rates reduced. I was trying to sell that man there an idea.

Q. And making misstatements in connection with it?

A. I do not say they were misstatements; they were just sales argument.

Q. You do not say they were misstatements. They were not misstatements?

A. I won't argue with you about that.

Q. Well—

A. The letter speaks for itself.

Q. I think it does, but I understand you to say, first you take issue with the letter, and then again that you do not. Now, which is it?

A. I was trying to sell the man an idea.

Q. And you won't say that you were misstating your own state of mind in connection with that?

A. I was simply trying to have him conform to my idea, to go along with me, and have short-haul rates put in effect, rates to short-haul points, lower than the present basis.

Q. Now, referring you to Commission's Exhibit 1599, which is your telegram of May 13, 1932—

A. Yes, sir.

Q. —weren't you aware that the industry had made an effort to discourage trucking,—the cement industry?

A. Only in a meagre way. I had in mind the thought that our company had about trucking at that time. It was a nuisance. That is the—

Q. Why did you speak for the industry? Why didn't you say the Medusa Company was trying to discourage trucking? Why did you say the industry was trying to discourage trucking?

A. Oh, perhaps I wanted the telegram to look more important.

Q. Some more sales talk?

A. I imagine so.

Q. You say it was unfounded?

A. No, sir. Just a rumor that I had heard.

41144 Q. Rumor?

A. Rumor, or information I had received from some of our people to the effect that they were not satisfied with the trucking conditions existing at our plants at that time.

Q. Weren't you aware at the time it was in effect that there was a 15 cents per barrel premium charge for selling cement for delivery by truck?

A. No, sir. I knew nothing about cement prices.

By Mr. Wooden:

Q. Is it your testimony that throughout your connection with the traffic department of the Medusa Company you have never had anything to do with prices?

A. I never sold a barrel of cement in my life.

Q. I did not ask you that. I asked you whether you had anything to do with cement prices.

A. No, sir; I have not.

41145 Q. You never assisted in figuring what delivered prices were?

A. Not in figuring delivered prices, as far as I know. I quoted rates to the sales department. What they used them for was not my concern.

Q. You knew what they used them for, didn't you?

A. No, sir.

Q. They were using them for prices?

A. No, sir.

Q. Is it your testimony that you never had any interest in delivered prices, or base prices?

A. Yes, sir; that is my contention.

41146 Q. I ask you if you did not testify on direct that you had a conversation with Mr. MacFarland about this short-haul rate activity of yours.

A. I do not recall any testimony to that effect in my direct examination.

Q. Do you recall testifying about any conversation with Mr. MacFarland about anything on your direct examination?

A. No, sir.

Q. I will find it for you.

A. I will appreciate it.

41147 Q. Do you mean to say that you were not interested in the trucking problem, the trucking question,

because of the difficulty in determining what delivered prices were with trucks taking delivery at the mill?

The Witness: I never said that.

By Mr. Wooden:

Q. Do you now say it?

41148 A. Say what?

Mr. Wooden: Read the question.

(Question read.)

Mr. Withrow: Same objection.

Trial Examiner Norwood: Overruled.

A. I was not concerned with delivered prices. My main sole object was to secure lower shipping rates for the Medusa Portland Cement Company.

By Mr. Wooden:

Q. You mean to say that you never knew that it was a problem agitating the cement industry—

Mr. Withrow: Your Honor—

Q. —because the truck rates were not known and for that reason the delivered prices could not be accurately forecast?

41149 A. That is correct, Mr. Wooden; I did not.

By Mr. Wooden:

Q. I call your attention to Commission's Exhibit 1675-B, your letter, in which you state that the principal reason for proposing a schedule of short-haul rates was to minimize trucking, and if they would return to the carriers the tonnage that has been moving in trucks, each manufacturer will at least know what the rate is to these short-haul points, but if it moves via trucks, it is just anybody's guess as to what the rate is.

A. Yes, sir; that is my statement.

Q. That was a fact?

A. What was a fact?

Q. As you state it there?

A. Why, yes, but it does not tie in with your question to me a moment ago. You talked about delivered prices. I am a traffic manager sitting on the sidelines trying to get lower shipping rates.

Q. You think delivered prices with anybody's guess as to what the rate is has no bearing on the delivered price; is that right?

41151 A. As I say, I do not know anything about delivered prices. I was—in that letter I was speaking about short-haul rates. I wanted to secure lower shipping rates for our company. That was my main object.

By Mr. Wooden:

Q. You were also seeking to get a reduction, were you not, of short-haul rates throughout the whole Central Freight Association territory?

A. No, sir; I was not. I was seeking for my own company.

Q. You mean to say that you were not seeking to get a reduction in territory beyond that in which your own company did business?

A. Only my own company, was all.

Q. You mean to say that you were not seeking a reduction in more territory than the territory in which your company did business?

A. No, sir; I was not. I was seeking a reduction for our own company.

Q. What was the territory in which you were seeking a reduction?

A. Principally Ohio.

Q. Principally. What else?

41152 A. Principally Ohio.

Q. What else?

A. Nothing else.

Q. You mean to say that your efforts to secure short-haul rate reductions were confined to Ohio?

A. Yes, sir. They initially were in Ohio.

Q. Initially. I do not mean initially. I mean at any time did you confine it to Ohio?

A. Yes, sir; I did, as far as I remember.

Q. Well, now, as I understand it, the railroads did not grant any general reduction on short-haul rates; is that right?

A. That is correct, Mr. Wooden.

Q. There were just scattered adjustments here and there from particular mills; is that right?

A. Yes, sir.

Q. And you were opposing some of those?

A. Yes, sir.

Q. In other words, the railroads left it to the industry,

the cement industry, entirely to do whatever was done toward minimizing or eliminating trucking?

41153 A. I do not know what the railroads had in mind in making these piecemeal adjustments. That is the reason I wrote to them. I was curious to find out.

By Mr. Wooden:

Q. But so far as any general adjustment was concerned the railroads did not assist the cement industry in eliminating trucking?

A. I do not know—

41154 Trial Examiner Norwood: Objection overruled.

A. I do not know.

By Mr. Wooden:

Q. What, if anything, can you state the railroads did toward assisting the cement industry in eliminating trucking?

A. I do not know what the railroads did.

41155 By Mr. Wooden:

Q. You cannot describe any activity or action of the railroads that had the tendency or effect of eliminating trucking or minimizing trucking?

A. No, sir.

Q. Referring to Commission's Exhibit 546-2-I and 2-J, who is the Mr. E. J. Maguire listed at the top of the document?

A. That man, Mr. E. J. Maguire was our former executive vice-president.

Q. You sent copies of your various letters and correspondence on this short-haul rate reduction to him from time to time, did you not?

A. Occasionally, yes.

Q. What was the distinction in functions between his vice-presidency and the vice-presidency of Mr. MacFarland?

A. Difference between day and night.

Q. Well, tell us more specifically than that.

A. Mr. MacFarland at that time had a title of vice-president, and he devoted most of his time to sales

41156 and promotion. Mr. Maguire was the second vice-president, the second man in charge of the company, devoting all his time to executive duties.

Q. And where did Mr. Maguire come along in rank—I mean Mr. MacFarland—come along in rank to Mr. Maguire?

A. Well, just giving you a guess on that; I would say about fourth or fifth down the line.

Q. How many vice-presidents were there?

A. At that time, Mr. Wooden, I would say three active vice-presidents, and one inactive vice-president.

Q. And Mr. MacFarland was one of the active ones, wasn't he?

A. Yes, sir.

Q. How did you put him fourth or fifth down the line on that basis?

A. Because I am putting the secretary and treas-
41157 urer in there, and on that Mr. MacFarland would fit in, starting with the sales, I wanted to get the officers in there first, starting with the president, executive vice-president, secretary-treasurer, assistant treasurer, assistant secretary, then starting with the sales. As a matter of fact, Mr. MacFarland would rank under Mr. Vanderwerp. Mr. Vanderwerp was vice-president in charge of operating.

Q. Sales is less important than operating?

A. No, sir; no. I would not say that.

Q. Well, you would not consider Mr. MacFarland's election to the presidency of The Cement Institute as any recognition of his importance to the Medusa Company, would you?

Q. Well, now, Mr. Vanderwerp that you talk
41158 about is mentioned in this Exhibit 546-2-I and 2-J. Mr. Vanderwerp outranks Mr. MacFarland, you say, because you say he was in charge of production?

A. No. Mr. Vanderwerp was with Mr. John for years and years. As a matter of fact, Mr. Vanderwerp built the Manitowoc plant back in 1923 and before Mr. MacFarland ever came with the Medusa Company.

41159 Q. Now, directing your attention, Mr. Cole, to Commission's Exhibit 5462-J, where you state Mr. Vanderwerp's position, what did you understand by "group of production points" that you referred to there?

A. I haven't any idea at this time. I could make a guess at it. I am simply restating something he told me there, Mr. Wooden. That is back in 19 what?

Q. 1933.

A. 1933.

Q. What were the group of production points, as you understood Mr. Vanderwerp to talk about?

A. I do not recall now, Mr. Wooden.

Q. Weren't they the points at which there was more than one eminent producer?

A. Well, that would seem logical, yes.

41160 Q. Did you agree with the position expressed by you there as being that of Mr. Vanderwerp's?

A. How is that?

Q. Did you agree with the position expressed there as being the position of Mr. Vanderwerp?

A. I was simply expressing his thoughts that he gave me. I did not agree with him.

Q. Did you disagree?

A. I did not pay any attention to it. I simply

41161 quoted the man, and that was all.

Q. Mr. Cole, were the mills which were the most prominent in trucking in 1931 and 1932 the mills that were not located at these group production points?

A. I do not know what you mean by "group production points"?

Q. Well, assuming it to mean points where there was more than one producer.

A. Well, I would like to answer that this way, Mr. Wooden, that trucking predominated, according to my observation, in the State of Ohio more than it did any other place at that time—that is, during 1931.

Q. Wasn't it more pronounced at points in Ohio other than Ironton?

A. Other than Ironton?

Q. Yes.

A. Well, based on the information that was given to me, it was my understanding that they were trucking throughout the State of Ohio from all the producing points in Ohio.

41162 Q. Including Ironton?

A. Yes, I would say so.

Q. This statement in Commission's Exhibit 546-2-L, to which I called your attention about Mr. Vanderwerp, can you explain why there should be any tendency for the use of trucking to put grouped production mills out of ter-

ritories unless they were not themselves engaging in trucking?

A. I was simply stating what Mr. Vanderwerp told me. I never questioned Mr. Vanderwerp as to what he meant by it. I simply passed it on for what it might be worth to Mr. Cleveland.

By Mr. Wooden:

Q. Well, can you see where the companies that employed the cheaper and quicker truck transportation to the job, as you said in your letter would eventually force the group production mills out of those territories unless the group production mills themselves were not engaged in trucking?

A. I could not answer that, Mr. Wooden, because
41163 I was not interested in any particular mill other than our own. I was simply trying to sell these other cement shippers my idea. Some of them agreed with me; some of them did not.

Q. You classed the Lehigh Valley mills as group production mills; wouldn't you?

A. In that case there is about eighteen or twenty mills in one grouping. Yes, I would say that is a group production.

Q. You agree, do you not, with the statement in your letter that Mr. Vanderwerp employed—that companies using the cheaper and quicker truck transportation—that truck transportation was cheaper and quicker on the job?

A. No, I do not agree to anything Mr. Vanderwerp said. I was simply passing on what he said to me.

By Mr. Wooden:

Q. You do not agree that truck transportation was a cheaper and quicker method of transportation to the job?

A. No, sir.

41164 Q. Mr. Cole, when you testified that at that time the rail rate,—short-haul rates on cement,—were
41165 paper rates, you meant that the traffic was moving, I mean wholly, by truck, didn't you?

A. In Ohio for that particular time, for those particular distances; yes, sir.

Q. What was there about truck transportation that made it so popular to the exclusion of rail transportation for those short distances?

41166 The Witness: May I ask what period you have in mind, Mr. Wooden?

By Mr. Wooden:

Q. A period as of which you wrote here in June, 1933, and prior thereto:

A. Oh, in 1933—we had regulation of trucks in 1933.

A. Well, then, prior to 1931 and 1932.

Mr. Withrow: Same objection.

The Witness: Now, let us take it up one at a time. Are you talking about 1931?

Mr. MacIntyre: Yes.

A. That was the time, if I recollect, when I was advised by the sales department about trucking by the dealers, and for the dealers. The traffic department did not know anything about that trucking, only what they heard from the sales department because we had no way of regulating it or trying to have it regulated. I am speaking now of 1931.

By Mr. Wooden:

Q. Yes. At the time you said that the rail rates for short-haul,—in the transportation,—was paper rates?

A. Yes.

Q. What was there about truck transportation at that time that tended to make the railroad rates paper rates, to give the business to the trucks?

41167 A. Well, all I know is that there was about fifteen or twenty thousand—the equivalent of about fifteen or twenty thousand carloads of cement was trucked in Ohio in 1931; why it was trucked is another thing. I simply passed that onto the railroads to point out to them that their rates were too high.

By Mr. Wooden:

Q. You knew, did you not, that truck rates were substantially lower than rail rates for short distances on cement, didn't you?

A. What period are you talking about?

Q. 1931.

A. No, sir; I did not know what the trucking rates were at that time.

Q. I did not ask you if you knew what they were, but didn't you know that they were substantially lower?

A. No, sir.

Q. When you said that they were paper rates, you did not know that they were substantially lower?

A. No, sir.

41168 Q. Wasn't your activity in seeking to get lower short-haul rates from the railroads predicated upon your knowledge that the truck rates were substantially lower, and, therefore, you needed lower rail rates?

A. No, sir. That was the thought I was passing on to the railroads.

Q. Do you mean to say that the railroads had no knowledge about trucking competition or trucking rates except what you gave them?

A. Well, from my experience with the railroads at that time I do not believe the right hand knew what the left hand was doing.

Q. Well, is it your answer that the railroads did not know anything about trucking competition or trucking rates?

A. Well, they seemed to know about it.

Q. But did not care about it; is that what you mean?

A. I don't know.

Q. They did seem to know about it?

A. According to the calls they made on me they were crying about business they were losing.

41169 Q. You knew at the time you prepared this Respondents' Exhibit 3258 in January, 1932, that truck rates were substantially lower than rail rates, didn't you?

A. That is just a cost study.

Q. Well, aren't those—doesn't that show a comparison of truck rates and railroad rates?

A. It says present trucking rates.

Q. And it also shows rail rates, doesn't it?

A. That is a year after 1931 that you were talking about a little while ago.

Q. January, 1932.

A. Now, do you want to get into 1932?

Q. Well, what difference was there between January, 1932, and 1931?

A. A great big difference.

Q. What difference? Tell us.

A. 1932—

Q. January, 1932.

A. In 1932.

41170 By Mr. Wooden:

Q. I asked you specifically about January, 1932.

A. All right. We will start with January, 1932.

Q. That is what I directed your attention to.

A. In January, 1932, I took up with truck manufacturers and contract carriers to find out about trucking rates on cement, and as the result of that I was able to make up this cost study which reflects the rate, and what I propose, and also the average truck rates.

Q. Why did you call that a cost study?

A. Well, if you got a better name for it, I will change it.

Q. Well, isn't it a fact that it is a showing of the truck rates and the rail rates? Where does the cost come in?

A. Well, the cost is shown here in this graph.

Trial Examiner Norwood: Do you mean it is a transportation cost; is that what you are showing?

The Witness: Well, yes. It is a showing—what I am showing here was for the benefit of the railroads to show the boys that they were losing, and if they would reduce their rates to the level I wanted them to they could recover considerable of this business.

By Mr. Wooden:

Q. I thought you said a few minutes ago that you did not know that the truck rates were lower than the rail rates?

A. I did not know. I did not know. I am simply telling you—

41171 Q. You did not know when you made this study—

A. Sir?

Q. You did not know until you made this study?

A. Well, I might have known a few days before, or a week before.

Q. But you did not know when you began your activities in 1931 that truck rates were lower than rail rates?

A. I started to study truck rates in 1930—1929, in fact.

Q. And you did not know until 1932 that they were lower than rail rates; is that your testimony?

A. I would say this, Mr. Wooden, that up until 1932 I did not know just what the trucking rates were. They were not regulated, to begin with, as far as we were concerned, and that is the only way I could find out what trucking rates were.

Q. But didn't you have a general knowledge as a traf-

fic man that truck rates generally were lower than the rail rates; at least for short distances?

A. Oh, I perhaps had a general idea on all commodities, but I did not know about cement.

Q. You knew about other commodities but not about cement; is that it?

A. Because I had never gotten into the handling of rates on cement.

Q. Do you mean to say you had that general knowledge about other commodities, but you did not have that
41172 general knowledge about cement?

A. Well, I will qualify it in this way, Mr. Wooden, that while I had some knowledge of these other commodities due to my investigation, I did not have the knowledge that I had in 1932; I knew that cement was being trucked, but I did not know what the rates were—that is, the specific rates.

Q. As a matter of fact, a lot of the trucking, as you have said once before, was done in dealers' trucks on which there were no rates at all; is that correct?

A. I do not know about the rates. I know that there was some dealers' trucks that came to the plant, because I was told that.

Q. And on such truck transportation there wasn't any rate at all, was there?

A. I do not know. As I said, the traffic department had nothing to do with the handling of trucking prior to 19—December of 1931. It was in January, 1932, when we started to thinking about negotiating for contract carriers.

Q. But as a traffic expert, can't you answer a question that when a dealer buying cement at the mill sends for the cement to the mill in his own trucks, that there wasn't any truck rate involved?

A. Well, actually, I have never seen a dealer's truck. I have heard they come there; I do not know whether it was his truck or John Smith's truck; I do not know whose truck.

41173 Q. You are not willing as a traffic expert to express an opinion on that question?

A. No, sir.

Mr. Withrow: I object.

The Witness: To me it is unimportant.

By Mr. Wooden:

Q. I think I have asked you, but I will ask you again, whether you did not testify that your activities in this

short haul revision campaign were entirely for the benefit of the Medusa Company.

A. That is correct, Mr. Wooden.

Q. And not on behalf of or for the benefit of the industry?

A. Absolutely not.

Q. If that is the case, Mr. Cole, why is it that you
41174 testified on page 40979, on direct, with reference to Commission's Exhibit 1599, that what you had in mind when you said the industry was trying to discourage trucking in 1931, without success, you meant your efforts with the railroads to secure rate reductions to short haul points?

A. Well, he speaks about an exhibit here, 1599. May I look at that, Your Honor?

Trial Examiner Norwood: Yes.

By Mr. Wooden:

Q. Yes, sir. I am going to show it to you shortly in this connection, anyway, or in another connection.

A. Oh, I understand my previous testimony now. The exhibit is my answer to Vice-President Cleveland's wire of the C. & N. W.

Q. That is right.

41175 A. That is what I stated; it went to my efforts with the railroads to secure rate reductions in short-haul points.

By Mr. Wooden:

Q. And a few minutes ago you testified that you were not acting on behalf of the industry but entirely for the benefit and on behalf of the Medusa Company?

A. That is correct, Mr. Wooden.

Q. Are both correct?

A. No, sir.

Q. Which one is correct?

A. I was acting on behalf of the Medusa Company to secure short-haul rates.

Q. Then, do you wish to retract your tesfimony on the page to which I called your attention?

A. I am agreeable to let the record stand as it is.

41176 By Mr. Wooden:

Q. You do not care to retract?

A. I see nothing there to retract.

Q. You see no inconsistency between the testimony you have given to the effect that you are representing only Medusa and not acting on behalf of the industry and your testimony on that page that you meant by "the industry's discouragement of trucking," your efforts to get short-haul rate reductions?

A. I will let the record speak for itself. I was acting solely for the Medusa Portland Cement Company.

Q. You said something this afternoon, I think, on cross-examination, to the effect that Mr. MacFarland had told you about attending a certain meeting. Do you remember that?

A. Yes, sir.

Q. Now, what meeting was that?

A. As I recall, it was a meeting that he told me was called by the railroads inviting dealers' representatives.

Q. And he had attended?

A. He told me that he had attended.

Q. Do you fix the time of that meeting and place?

A. I do not recall now. It might perhaps have been the early part of 1932, January.

Q. Would you say it is the meeting that is covered by Commission's Exhibit 1043-4-S, 4-T, and 4-U?

41177 A. Yes, I would say about that.

By Mr. Wooden:

Q. What did Mr. MacFarland tell you about the meeting?

A. Nothing.

Q. Well, it was a meeting called by the railroads 41178 at which there were representatives of dealers; is that all?

A. He did not even go that far.

Q. I thought you said a moment ago—

A. He put his head in the door, maybe, and said, "How are you, George?" "Fine." "How are you today? Where have you been?" "Down to New York attending a meeting." That is about as far as it went.

Q. He didn't even tell you the subject of the discussion?

A. No; and I was not interested, even, to ask him about it. My situation there with Medusa Company as traffic manager, I look after the rates and rates alone, and other transportation matters.

Q. Now, with regard to some of these objections that you lodged with railroad companies because they had made

some piecemeal reductions in rail rates to meet truck competition, what was the basis of your objection to such reductions?

A. Just keeping the old kettle steamed up, keeping the question alive.

Q. Well, the thing that you had been doing would have been, trying to get reductions—now, here you head some cases where you opposed reductions. What was your reason for opposing them in some cases and favoring them in others?

A. Well, because I was not being benefited.

Q. As a matter of fact, you were being injured, weren't you, in some of those reductions?

41179 A. I do not know, Mr. Wooden, unless you can point out some of the instances you speak about there.

Q. Well, wouldn't you be injured by having a reduction in rail rates made from some base point on which you might be basing your delivered price?

A. I could not give you a correct answer there. That is an answer to whether we would be hurt or not. That is problematical.

By Mr. Wooden:

Q. Do you remember your objection to the reduction in rates from Mitchell, Ind., to Louisville?

A. I remember writing about that, Mr. Wooden.

Q. What was the basis of that objection?

A. Well, let's look at my letter and get it clear.

Q. You do not have any recollection independently of the letter as to what the basis of your objection was to a reduction in rail rates from Mitchell to Louisville?

A. No, sir; not unless I see the letter.

41180 Q. Well, isn't it a fact that you were selling in Louisville at a delivered price based on Mitchell, and that it would reduce your mill net if you had a reduction in the rail rate from Mitchell to Louisville?

A. As traffic manager for the Medusa Company, I do not recall our company ever making a carload shipment to Louisville, Ky.

By Mr. Wooden:

Q. Or soliciting any business there?

A. I do not know anything about soliciting. I am not in the sales department.

Q. Well, were you making the objection to the reduction in the rate from Mitchell to Louisville on behalf of some company other than Medusa, then?

A. Just carrying on the propaganda; keeping the subject alive.

Q. Carrying on the propaganda of getting reductions in short-haul rates by opposing this reduction?

A. Getting short-haul rates for the Medusa Port-
41181 land Cement Company if and when the railroads would finally agree to do it.

Q. What was Medusa's efforts in Louisville,—in the rate to Louisville,—if you did not make any shipments or have any business there?

A. Well, do you understand, Mr. Wooden, that under the basis of rates in effect at that time it was a mileage scale of rates, and, naturally, they were all predicated on the same yardstick? My excuse for writing to whateyer railroad I wrote to there, I have not the letter in front of me; you seem to have it there, was merely to point out to him that a few months prior they turned my proposition down, but in this case they were making the reduction.

Q. Well, I call your attention to your letter, which is Respondents' Exhibit 3277, and will ask you what the basis was for Medusa's objection to the reduction in rates from Mitchell to Louisville?

A. Well, I very definitely state here we,—meaning the Medusa Company,—are certainly opposed to specific reductions in the various parts of Central territory of cement rates to meet truck competition unless the reductions
41182 are made generally from all producing points.

By Mr. Wooden:

Q. I am asking you why.

A. Well, you disrupt the scale, Mr. Wooden.

Q. You would have affect pretty directly the mill net, do you not?

A. I do not know a thing about mill nets.

Q. You do not even know that your company uses basing points in selling cement?

A. Oh, I would not say that. I have heard in a vague way talk about basing points. I have never really had it defined to me.

Q. Now, as I understand it, you were not interested in Louisville business.

A. I am interested in any shipment that the Medusa Company makes, but I told you a little while ago, Mr. Wooden,—and I will tell you again,—I checked, and from my records I have no knowledge of our company making a car shipment of cement to Louisville, Ky.

41183 By Mr. Wooden:

Q. Why, then, in this Respondents' Exhibit 3277 did you tell Mr. Morris, of the Central Freight Association, that it was unfair to cement shippers who tried to compete on a car basis because of this reduction to Louisville?

A. That does not state here that we were talking about any shipments from Louisville. I am simply pointing out to the gentleman that it is disrupting the scale.

Q. But you say you were not interested in it in Louisville; you do not have any business there.

A. I said I have no record of our company shipping a carload of cement to Louisville, Ky.

Q. Were you speaking for other shippers when you said it was unfair to cement shippers who tried to compete on a car basis?

A. No, sir. I had in mind the Medusa Portland Cement Company.

Q. And it was not unfair to you in the sense that you had any business in Louisville that you know about?

A. Is that a statement, Mr. Wooden?

Q. No, it is a question.

A. I did not say that.

Trial Examiner Norwood: Is that a fact, or not?

41184 The Witness: Why, no, it is not a fact.

Mr. Wooden: Is there an answer to the question?

(Record read.)

By Mr. Wooden:

Q. In other words, you mean to say that you were writing neither on behalf of the Medusa Company nor on behalf of any cement shipper?

A. I am either dumb or I just don't understand your questioning. Let me put it plain to you: When I heard about that reduction happening just a few months after I was turned down on my proposal in Chicago, I wrote to Mr. Morris simply calling his attention to that, feeling that he might revise this and give the Medusa Company a reduction.

Q. But at the same time you objected to the reduction to Louisville where you had no business?

A. That is just a routine thing that we do every time we hear about a reduction, we write to protect our interests.

Q. Who else in the cement industry that you can name took a prominent part in this effort to get rate reductions on short-haul transportation from the railroads?

41185 A. The Medusa Company is the one that made the proposal at the suggestion of the railroads to Mr. Morris, and he in turn invited the other interested shippers in the Central territory.

By Mr. Wooden:

Q. Can you name any other representatives of a cement shipper that took an active part in this program similar in any way to the part that you took?

A. Are you speaking now of the proceedings—that it, the meeting in Chicago? If you are, it is in the record who were there.

Q. I am speaking of the period of time during which you were carrying on all this correspondence seeking to get a reduction in short-haul rates. Who else in the cement industry was engaged in carrying that on besides you?

A. I do not know of anybody else except the other fifteen or twenty or thirty representatives at this meeting.

Q. You do not know of anyone else that was corresponding with the other cement shippers about it other than you?

A. No, sir; unless I got copies of the letters, I would not know anything about it.

Q. Now, I understood you to say that you did not have any knowledge or information as to the effect of trucking upon competitive conditions, price conditions.

A. I told you I did not know anything about
41186 price, so perhaps that would answer the question.

Q. You did not know anything about the effect of transportation rates upon delivered prices?

A. Naturally, not knowing anything about prices I would not know anything about delivered prices.

By Mr. Wooden:

Q. Or a relation between delivered prices and transportation?

A. That is correct; yes, sir.

Q. Directing your attention to Commission's Exhibit

1600, weren't you informed by that telegram from Mr. Cleveland? I believe it is, that he had heard that the cement industry had concluded in order to be in position to know the competitive situation regarding transportation charges, that the cement companies would discontinue trucking?

A. Now, what is your question?

Q. Didn't you get that information from Mr. Cleveland?

41187 A. I have before me here Exhibit 1600, which is a telegram from Mr. Cleveland, and in here he says: "I have heard from several sources that the cement industry as a whole has concluded in order to be in position to know the competitive situation regarding transportation charges that the cement companies would discontinue trucking and all cement would move by rail Stop Although this information has reached me from several sources I have not heard anything definitely from your company Stop Would appreciate it greatly if you would advise me by wire as to whether this is also your policy particularly as regards movement from Dixon and Manitowoc."

By Mr. Wooden:

Q. And didn't you reply to that telegram, as shown by Commission's Exhibit 1599, saying that you were agreeable to eliminating trucking if other companies did also?

41188 A. Yes, this is my reply here, Mr. Wooden.

By Mr. Wooden:

Q. Then, what do you mean by saying that you had no knowledge or information as to the effect of trucking upon delivered prices, or the relation between delivered prices and transportation rates?

A. I do not know anything about delivered prices.

By Mr. Wooden:

Q. Showing you Commission's Exhibit 1320, page 273 of that exhibit, which contains a record of your testimony in this Pennsylvania Commission case. Do you recognize that as your testimony?

41189 A. Yes. This seems to be part of my testimony, at least, in that case, Mr. Wooden.

Q. Well, when you adopted there on that record the testimony of Mr. Gubernator, do you mean to say that you did not know anything about the relation of truck transportation to delivered prices?

A. Yes, sir. I did not.

Q. Even though Mr. Gubernator testified about it and you adopted his testimony?

A. That is correct. Yes, sir.

41190 Q. Mr. Cole, showing you Commission's Exhibit 1507, carbon copy of your letter to Mr. Brister, of the New York Central, and I note also that a copy was apparently sent to Mr. McAdoo, of the Standard Portland Cement Company.

A. Yes, sir.

Q. Why was a copy sent to the Standard Portland Cement Company?

A. As I recall, Mr. McAdoo was at this meeting in Chicago, and this particular case prompted my letter. He phoned me that this particular situation had arisen, and for that reason I wrote the New York Central because they serve our plant at Bay Bridge. They do not serve
41191 the plant of the Standard Portland Cement Company, and he happened to hear about it, and he was one of the shippers that was in favor of this short-haul reduction.

Q. You mean that you wrote the letter on behalf of Mr. McAdoo?

A. No, sir. I wrote it on behalf of the Medusa Company.

Q. What do you mean by your explanation that you were on that route, and the New York Central, and that he was not?

A. That what?

Q. I understood you to say you wrote it because he told you about it and he was not on the route, and you were.

A. I did not say that. I said that our company is served—

Q. That is what I mean.

A. Well, on the route. That is a different proposition.

Q. All right.

A. We were served by the New York Central Railroad at Bay Bridge. His company is located—his plant, rather, is located at Painesville, Ohio, on another railroad.

Q. In other words, he thought that it would be more effective if you wrote because of that than if he wrote?

A. Well, naturally, a shipper on the New York Central would have more weight than a shipper on some other railroad with that particular railroad.

Q. In this letter you say that all trucking of ce-
41192 ment in the western part of New York had been dis-
continued with the exception of Erie and Niagara
counties, and the same holds true in Ohio. How did you
know that?

A. Well, I was so informed, as I recall, by our sales department.

Q. You did have contacts with your sales department from time to time about this trucking matter?

A. No, no.

Q. You did get this information.

A. Well, naturally, I might have got it from some of the boys while I had lunch with them, or while talking with the sales manager about something he might have mentioned it to me.

Q. You go on to say, in fact the trucking of cement since the first of the year has been cut out in all the eastern States and western Pennsylvania, western New York, and Ohio. How did you find that out?

A. Why, I imagine the same source of information, Mr. Wooden.

Q. What was the information contained in this letter that you got from Mr. McAdoo?

A. He simply told me about the proposal of the railroad.

Q. Do you mean this job of 40,000 barrels; is that what you heard?

A. No, I am talking about the proposal to reduce the rate.

Q. This was not a proposal; wasn't it an actual
41193 reduction. You were complaining about the reduction having been made.

A. Well, you have been showing me so many letters, maybe I had better take time to read them.

Q. Yes, you had.

A. Now, this is an instance where the New York Central in June of 1933 made a reduction in the cement rate from Buffalo to Rochester.

Q. You were protesting the reduction in that letter, weren't you?

A. I said, "I wish you would advise me the reason for this generosity on the part of your railroad."

Q. What was Medusa's interest in objecting or protesting that reduction from Buffalo to Rochester?

A. Well, we felt this way about it, that by making this protest the New York Central might break down and reduce our rate to Cleveland or Sandusky or some place.

Q. You did not ask them to do that, did you?

A. Well, this is just one letter.

Q. Why didn't you ask them to do it, if that is why you protested the rate?

A. Maybe I did.

Q. Not in that letter.

A. No, not necessarily in this letter.

Q. Do you remember that you did?

A. No, I cannot recall at this time. I was talk-
41194 ing to these railroad men most every other day or every other week about reducing rates.

Q. Were you interested in business in Rochester,—Medusa, I mean?

A. Well, as I recall Rochester; let's see,—when was that, 1933?

Q. June, 1933.

A. Yes, we would be interested in any business in Rochester.

Q. Did you make shipments there?

A. As I recall, we have made shipments there.

Q. Isn't it a fact that the effect of the reduction of the rate from Buffalo to Rochester had the effect of—the effect of it was to reduce Madusa's mill net on shipments to Rochester?

A. I do not know as to that, Mr. Wooden.

Q. Do you mean as a traffic man you cannot answer that question?

A. No, sir; I cannot.

Q. A traffic expert.

A. That is right. I can talk to you about rates, but when you talk about prices, you and I are just talking a different language.

Q. Apparently.

41196 Q. Mr. Cole, in this same exhibit, 1507, Commission's exhibit, you stated, "The cement companies in Buffalo did not request the reduction nor were they aware that a reduction was going to be made." How did you know that?

A. Why, I checked that with the New York Central Railroad in Cleveland.

Q. Do you mean to say that the cement companies in Buffalo were not aware of the reduction in advance?

A. Did I say that?

Q. "Nor were they aware that a reduction was going to be made,"—that is what you said.

A. That is—possibly that is the information that I got from the railroad: You understand, Mr. Wooden, that there are two plants, I believe, in Buffalo,—were at that time; I do not think their headquarters were there.

Q. I note also in this letter you say that the cement companies in Buffalo prohibit trucking their cement except in Niagara and Erie Counties. What was your source of information on that?

A. I could not tell you at this time. It would be just a guess.

Q. Wasn't that from the sales department of your company?

A. It possibly might have been.

Q. What other source of information do you have in mind, if any?

A. None at this time.

41197 Q. Referring you to Commission's Exhibit 1512, a letter to you from freight traffic manager of the Western Maryland Railway Company, answering a letter of yours, and refers to the action taken by the cement industries and the help it had been to the railroads, what action by the cement industries was it referring to?

A. I did not write to Mr. McAuley. If you will read that letter you will find I did not write to him.

By Mr. Wooden:

Q. You wrote to Mr. Healey, didn't you?

A. Yes, sir.

Q. What did you understand Mr. McAuley to 41198 mean by the action of the cement industries?

A. I did not pay any attention other than reading it, and you notice I put my "G.W.C." on there, and it went right to the file.

Q. In other words, you did not have any understanding of what your correspondent had in mind?

A. Oh, he was handing me a few bouquets, I guess; that is about all. I paid no attention to it.

Q. I mean, by his language, the action of the cement industry.

A. No.

Q. Now, on the same exhibit, I call your attention to the

statement you made to the Western Maryland Railroad of the jobs that you had lost to other cement companies because of banning trucks from the plant.

A. I did not use that language.

Q. Did you send him a statement showing the jobs you had lost?

A. McAuley?

Q. Yes.

A. No, sir.

Q. Did you send one to the Western Maryland Railway?

A. I do not know. I do not know.

Q. Did you send one to Mr. Healey, of the Western Maryland Railway Company?

41199 A. Well, Mr. McAuley states, "Your letter of the 18th addressed to Mr. Healey." I must have written to Mr. Healey.

Q. Did you send him a list of description of jobs you had lost because you had discontinued trucking?

A. I do not know. I cannot recall unless I see the letter.

Q. Didn't you write some other railroad companies describing the jobs that you had lost because of banning trucking?

A. I do not know whether I used the word "banning" or not.

Q. Well, because of discontinuing the trucking.

A. Well, let's look at the letter and see.

Q. Well, don't you remember?

A. Not seven or eight years ago.

Q. Well, I am showing you Commission's Exhibit 1523-A and B, a letter of yours to Mr. Brennan, of the New York Central. Didn't you there,—and didn't you send that letter, the same letter, to a number of other traffic railroad representatives?

A. Now that I have the letter in front of me; yes, sir; I sent this letter out.

Q. And you in that letter gave a description of jobs you had lost because of discontinuing trucking at Medusa, didn't you?

A. If you will just look over my shoulder here a minute, and we will start right here, the sixth paragraph in my letter to Mr. Brennan, and you understand why I wrote him, because yesterday I testified on direct that he called to see me and he asked me ... give him a resumé of the
41200 transportation conditions as a whole. Now, in this paragraph I am now citing you, I say, "Since truck-

ing was discontinued we lost a large volume of tonnage." Now, I do not say anything in here about trucking being banned or abandoned. It was simply "discontinued" by someone, I do not know who.

Q. Didn't you go on to say, or hadn't you already said in the paragraph preceding it, that you had discontinued all trucking from the Bay Bridge plant with the exception of Cuyahoga County?

A. Yes, sir.

Q. And at the same time you discontinued all trucking from Silica, Ohio, except Lucas County in the State of Michigan?

A. That is what the letter states. That is not banning it.

Q. You distinguish between banning it and discontinuing it, do you?

A. Well, there is a suggestion made there, it seems to me. Trucking was never discontinued from our plants.

Q. Didn't you say it was here.

A. I said "except."

Q. Oh, well.

A. Well, now, read it.

Q. I did read it. All trucking from the Bay Bridge plant was discontinued with the exception of Cuyahoga.

A. Oh, well, that is not banning it. We have never discontinued trucking.

Q. I know you haven't, in just the way you say it.

41201 I know that trucking has not been discontinued in the hauling of cement, never contended it was.

Mr. Withrow: The complaint is a little bit to the contrary.

Trial Examiner Norwood: Off the record.

Proceed.

By Mr. Wooden:

Q. What did you mean by this language in Exhibit 1523-B, your letter, when after setting out the number of jobs that you had lost since discontinuing trucking, and as stated in the letter, and what did you mean by this language, "that the above will give you a good idea as to the amount of additional tonnage the railroads now enjoy in the State of Ohio due to the fact that the cement industry has succeeded in curtailing trucking?

A. If you were a railroad man you would understand

what I mean, but I will try and explain to you I was trying to show this gentleman that they had lost a lot of business. Now, as speaking for our company, as I told him in the past we had met this competition, and now some of it had been curtailed, but I was warning him in there that,—the inference was,—that unless he reduced his rates it might happen again.

41203 Q. Do you say, Mr. Cole, that you did not testify on cross-examination this afternoon that the industry, neither the industry nor you in your efforts to secure short-haul rate reductions, was attempting to eliminate trucking?

Mr. Withrow: Your Honor, I object. It has been asked a dozen times already.

Trial Examiner Norwood: The objection is overruled.

Mr. Withrow: The record does not so show.

The Witness: I did not say that.

Q. Did you testify this afternoon on cross-examination that neither the industry nor you were attempting to minimize or curtail trucking?

41204 A. I do not recalling making that statement.

41205

Washington, D. C.,
Friday, June 14, 1940.

41207 GEORGE W. COLE thereupon resumed the stand and testified further as follows:

Cross-Examination (Resumed) by Mr. Wooden.

Q. Mr. Cole, when we recessed last evening I was asking you some things about your letter which is in the record as Commission's Exhibit 1523-A and B. I was asking you, I believe, and I now ask you, at any rate, where you obtained the information stated in your letter that the cement industry had succeeded in curtailing trucking in the State of Ohio and a similar condition that prevailed in the State of Pennsylvania.

A. Well, I do not recall specifically, Mr. Wooden, where I obtained that information. I would know, of
41208 course, at the time I wrote that letter.

Q. You now have no knowledge or recollection?

A. Not at this time, Mr. Wooden, no.

Q. You also state, with reference to New York State, that if certain construction work had been let prior to December 15 it would have been handled by truck. How did you select the date there?

A. This paragraph, as I read it in looking over the other part of the letter, pertains to a specific job, and I imagine that that date December 15 that I quoted there was the result of my reading a report, perhaps, from one of our field representatives.

Q. You are just surmising now or guessing?

A. I have to guess at this late date, Mr. Wooden.

Q. I will ask you whether or not December 15 was not the date on which trucking in that area was discontinued.

A. I do not recall, Mr. Wooden.

Q. You go on to say that with the exception of two counties in New York and two counties in Ohio the trucking had been discontinued, and in those four counties the trucking price was five cents a barrel over the car price. Where did you get the information about the five cents extra charge for trucking?

A. Not knowing anything about prices, the indications are—that is, as it comes to me now, it must have
41209 been given to me by somebody in the organization; that is, I am speaking of the Medusa Company.

Q. You mean the sales department?

A. It possibly might have been the sales. When prices are mentioned I imagine it would be the sales department.

Q. You did learn something about prices from time to time from the sales department?

A. Not learn; I heard about them.

Q. You go on to say in this letter that with the exceptions noted, and excepting the States of Michigan, Wisconsin, and Buffington to Chicago, all trucking of cement in Central and Trunk Line territory has been discontinued. How did you know about the discontinuance of trucking in such a wide area as that?

A. Well, I could answer that in this way, that I might have inquired from our people what is the status of the situation, that I wanted to write a letter to Mr. Brister, and I assume that information was given to me.

Q. This is a letter to Mr. Brennan and to other railroad executives. A copy did go to Mr. Brister I see.

A. Yes, sir.

Q. Your company, Medusa, didn't sell and deliver ce-

ment in all portions of the area in Central-Trunk Line Territory, did it?

A. What do you mean by Central-Trunk Line
41210 Territory, Mr. Wooden?

Q. Central and Trunk Line Territory is the way you put it here.

A. Yes. I will say owing to the geographical location of our mills, particularly—that would be in 1931—from our Wampum plant we ship into part of Trunk Line territory; and from our York plant we ship into the eastern part of Trunk Line territory; and from the Alton plant going west we ship into Ohio, certain portion of Ohio; from Bay Bridge we would ship into Ohio; and from Silica we would ship into Indiana and Michigan. So that practically takes care of all C. F. A. territory.

Q. And Trunk Line territory?

A. And a great part of Trunk Line territory; yes.

Q. Is it your testimony that you ship into all portions of Central C. F. A. territory?

A. I would say generally speaking we would ship into, if we have an order, to any part of Central Freight Association territory.

Now, as to Trunk Line territory, from our York plant we would shop perhaps about the center—to the north, about the center of New England territory, perhaps an occasional car north of there.

Q. You also stated in this letter that the cement industry has done very good work in its efforts to curtail
41211 trucking. What were you there referring to?

A. That perhaps might have been another part of the information that was given to me at that time. I do not recall what the purport of it is now.

Q. Well, you said yourself that the industry had done very good work in its efforts to curtail trucking. What was the good work the industry had done?

A. As I say, Mr. Wooden, it would be rather difficult for me at this time to tell you what I had in mind when I wrote that letter.

Q. Well, difficult or not; is it possible for you to state what you had in mind?

A. Not at this time, Mr. Wooden.

Q. You went on to say that progress had been made without the aid of a general reduction of cement rates up to 50 miles, but the railroads should watch the situation

closely and be prepared for prompt concerted action in the event the industry finds itself unable to keep the present situation in hand. Did you ever ask the railroads to take such concerted action?

A. By concerted action I had in mind there that to be consistent with my request at the Chicago meeting I wanted all the railroads that were interested to give consideration to any proposal that I might have affecting my company.

Q. Well, I am asking you if you ever, after the date of this letter, asked the railroads to take any action?

41212 A. I do not recall at this date; you mean concerted action?

Q. Yes.

A. You mentioned concerted action.

Q. Yes. You said "Be prepared for prompt concerted action." Did you ever ask them to take such action?

A. Not that I recall after that letter.

Q. What did you mean by the language "take prompt concerted action," or "be prepared for prompt concerted action in the event the industry finds itself unable to keep the present situation in hand"? What did you mean by keeping the present situation in hand?

A. That would be rather difficult for me at this time to tell you what I meant when I wrote that letter. You understand me—

Q. Well, do you say you cannot now say?

Mr. Withrow: Well, let the witness finish his answer.

Mr. Wooden: All right.

A. You understand, Mr. Wooden, that at that time I was in the midst of trying to secure low shipping rates for the Medusa Cement Company.

By Mr. Wooden:

Q. Not in—

Mr. Withrow: Now, let the witness finish his answer.

41213 Trial Examiner Norwood: I think he is doing that.

A. Well, that letter that you are referring to there is addressed to Mr. Brennan, assistant freight traffic manager of the New York Central Railroad. His railroad has served one of our plants for over 45 years. They have very deep interest in the welfare of our company in so far as the transportation of cement is concerned.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Can you answer that a little more directly?

Mr. Wooden: He has not answered it at all.

A. I was getting to that part of Mr. Wooden's question.

Mr. Withrow: Would you read back the witness' answer as far as he has gone?

(Answer read.)

A. And I was simply pointing out to him so that he could pass on to his associates that in the event truck competition became so prevalent I wanted him to bear in mind that we wanted the New York Central to give favorable consideration to reducing our short-haul rates.

Now, in addition to that, Mr. Wooden, the New York Central is a very, very good customer of ours in the matter of purchasing cement, and the less tonnage that they haul from our company the less business—that is, the less 41214 cement they will purchase from us.

By Mr. Wooden:

Q. Now, are you ready to answer the question that I asked you, Mr. Cole?

A. Well, if I have not answered it, if you will bisect or sectionize it, maybe I can.

Mr. Wooden: Will you read the question please?

(Question read.)

A. Well, I am at a loss at this moment to give you my reasons for that statement.

By Mr. Wooden:

Q. Well, in the same letter you talk about the discontinuance of trucking, didn't you, with certain exceptions that you outlined; is that what you mean?

A. No, I don't think so.

Q. But you cannot say what you did mean?

A. No, not at this time, I cannot, Mr. Wooden.

Mr. Withrow: Might I suggest, Mr. Wooden, if you showed him the whole paragraph instead of reading clause by clause the witness might be better able to answer your question.

Mr. Wooden: I have no objection at all. If you want to look at it (handing documents to the witness). That paragraph.

By Mr. Wooden:

41215 Q. As a matter of fact, Mr. Cole, haven't you been over all your correspondence that is in evidence in this case before you appeared here?

A. No.

A. No, sir; I have not.

By Mr. Wooden:

Q. Have you read some of them?

A. I think I have read some of it; yes, sir.

Q. You do not recall reading this letter?

A. No, I do not.

Q. Do all the railroads to whom you sent copies of this letter serve your plants?

A. You have that letter in front of you, Mr. Wooden. Would you read the names?

Q. How about the Pennsylvania?

A. The Pennsylvania serve one of our plants.

Q. Which one?

41216 A. They serve two of our plants direct, the Wampum, Pa., plant, and the York, Pa., plant.

Q. The New York Central?

A. The New York Central serves two of our plants, one at Bay Bridge, Ohio, and one at Wampum, Pa.

By Mr. Wooden:

Q. How about the Erie?

A. The Erie does not serve our plants directly, but participates in a goodly share of our cement business, as well as our inbound business.

Q. And the Nickelplate?

A. Likewise, the status of the Nickel Plate is the same as the Erie, although in connection with the Nickel Plate they serve our Silica, Ohio, plant indirectly.

Q. How about the W. & L. E.?

A. The Wheeling & Lake Erie serves our Silica, Ohio, plant indirectly.

Q. Well, in January, 1933, when this letter was
41217 written, you had long since, long before that, failed, and recognized your failure, to get the short-haul rate reduction from the railroads, hadn't you?

A. I failed in my efforts during 1932 to accomplish what I set out to in the normal way.

Q. In other words, it was May, 1932, when the railroads

finally gave you notice that they were not going to reduce the short-haul rates; is that right?

A. Yes, sir. As I recall, they wrote a letter saying they tabled the proposal because there was no meeting of the minds, of the railroads, and the interested shippers.

Q. Now, directing your attention to Commission's Exhibit 1518, a letter addressed to you by Mr. Harry O. Oliver, of the Pennsylvania Railroad, in reply to a letter you had written John Large, of his company, on January 16, 1933, what was the great job for the railroads and the industry which Mr. Oliver said you had done?

41218 The Witness: May I see the letter, Mr. Wooden, please.

(Mr. Wooden hands letter to the witness.)

A. Mr. Wooden misstates this letter, Your Honor. Mr. Oliver winds up this letter stating, "It has been a great job for the railroads and the industry, and you know, of course, how much I appreciate it."

By Mr. Wooden:

Q. I just asked you to state what was that great job—

A. Oh, I don't know.

Q. —that you had done?

A. Where does it say that I had done it?

Q. Well, he says, if you want to be more specific, he says he knows you were the backbone of the movement.

A. That is entirely different from the statement you just made that he said I had done a great job. There is not a thing in that letter, Mr. Wooden, stating that I did a great job, that I can see.

Q. Well, he was expressing his appreciation to you, wasn't he?

A. I don't know whether he was or not.

Q. He said, "Of course, you know how much I appreciate it."

41219 A. Appreciate what?

Q. The great job. Why was he expressing appreciation to you for a great job that you had not done?

A. There is not a thing in here where he states he appreciates anything I did or did not do. I have re-read this letter now twice, and if you can point out to me, Mr. Wooden, any place in that letter where he says that he appreciates what I did—

By Mr. Wooden:

Q. Well, I will read the whole letter.

A. I wish you would.

Q. What did you understand Mr. Oliver to mean by his statement that any sacrifices your company might
41220 have made he hoped would be more than offset by the return of the cement to the rails and the consequent stabilization of markets?

A. I would not know what he had in mind there, Mr. Wooden, to be frank with you at this time.

Q. You do not know what he meant by "stabilization of markets"?

A. Oh, I might have a general understanding of what he means there.

Q. Well, what was it?

A. Stabilization of markets to my mind would mean that it would have something to do with prices, I suppose.

Q. Yes. What consequent stabilization of prices or markets did you understand him to refer to?

A. I really would not know, Mr. Wooden. I know nothing about prices, so I would not be able to answer your question.

Q. As an expert traffic man, do you say you cannot see any relation between stabilization of markets or prices and the curtailing of trucking?

Mr. Withrow: Your Honor, the only thing—there is no connection with a traffic expert sufficient to make him an expert to express an opinion on prices and markets and it is improper. He has not been qualified as an expert on prices and markets. It seems to me the proper person to ask that question of would be an economist. I object to the question on that ground.

41221 Trial Examiner Norwood: The objection is overruled.

Mr. Withrow: It is calling for an opinion and a conclusion that would have no probative value whatsoever.

Trial Examiner Norwood: Answer the question.

A. Mr. Wooden, I, as traffic manager for the Medusa Company, am charged with the responsibility by my company to secure for them at all times on in and outbound shipments the lowest reasonable rates that I can obtain,—now, as to stabilization of markets, I simply cannot answer your question.

By Mr. Wooden:

Q. Do you mean to say that as a traffic expert you have no knowledge or opinion about the relationship between transportation rates and delivered prices?

A. Yes, sir; that is my answer, Mr. Wooden.

By Mr. Wooden:

Q. You do not know how transportation rates affect delivered prices?

A. I do not know the effect upon the delivered price; no, sir.

By Mr. Wooden:

Q. Not even in a general way?

41222 A. No, sir.

By Mr. Wooden:

Q. Referring again to this Commission's Exhibit 1523, you say that since trucking was discontinued you lost a large volume of tonnage, particularly on Ohio State jobs; that means jobs to the State of Ohio?

A. I would assume that that would mean jobs that were let by the highway department.

Q. You went on to say that these jobs all moved by rail from competing mills. What competing mills got those jobs because you discontinued trucking?

A. I would not know what the names of those mills at this time were, Mr. Wooden.

Q. You cannot name any of them?

A. No. I could name you mills in Ohio, but I do not know what mills got those particular jobs at this time.

Q. Are the jobs referred to in the first paragraph of page 2 of Exhibit 1523-B,—what jobs were those; were those private jobs?

A. No, I would imagine that they were all highway jobs; that is, jobs that were let by the Highway Department of the State of Ohio. I say that because of the large amount of cement involved in each part of, or beyond the town itself, as shown in that letter; that is, opposite the town or towns.

41223 Q. Calling your attention to Commission's Exhibit 1607, it is a copy of a letter from A. P. Meyer to Eugene Morris, of the Central Freight Association, and at the top is written "Copy to G. W. Cole, Traffic Manager." Can you say why a copy was sent to you?

A. The reason Mr. Meyer sent me a copy of this letter addressed to Mr. Eugene Morris, Chairman of the C. F. A., was no doubt due to the fact that his traffic manager was a participant in the negotiations before Chairman Morris at the hearing in April, 1932, in the matter of securing rates for short-haul points.

By Mr. Wooden:

Q. Can you say whose handwriting the name of A. P. Meyer appears in at the bottom?

A. No, sir; I cannot, Mr. Wooden.

Q. It is Meyer, not Meyers; Meyer.

A. No, sir; I cannot say.

Q. Well, you asked Mr. Meyer to send you a copy
41224 of his letter to Mr. Morris, didn't you—calling your attention to Commission's Exhibit 1613, the last paragraph of it.

A. Now that you show me this letter, dated April 29th, that appears to be the fact, that I did, because he was, as I stated, one of the participants, and at this meeting of Chairman Morris', Morris instructed all the cement companies to send on lists of tonnages that moved by truck to place him and the railroads in position to see how much business they were losing—that is, losing to the trucks.

Q. Now, in Commission's Exhibit 1613, your letter to Mr. Meyer, you referred to his telephone conversation with your Mr. MacFarland. How did you know about that telephone conversation?

A. As I recall this, Mr. Wooden, I was out of the city at that time, and Mr. Meyer apparently got hold of Mr. MacFarland and gave him the information, and when I returned, why, Mr. MacFarland mentioned the message he received, and that is the result of my letter to Mr. Meyer.

Q. Do you recall that you were out of town at that time—

A. No.

Q. —or are you just surmising?

A. Just surmising, I guess. I do considerable traveling.

Q. Under what officer of the company, the Medusa Company, when traveling, do you report?

A. I report direct to the president, and in his
41225 absence I report to the executive vice-president.

Q. Now, as I understand it, there was a special

committee handling this application for reduction in short-haul rates on behalf of the railroads, a committee representing the railroads; is that right?

A. Yes, sir.

Q. Was there any committee representing cement shippers?

A. No, not that I recall. You have in mind the April meeting in '32 in Chicago?

Q. I do not have any particular thing in mind. That is a question.

A. That is the reason I ask you. That is the only meeting I have in mind.

Q. Well, it is your testimony there was no committee of cement shippers that functioned in that matter?

A. That is correct, as far as I know, Mr. Wooden.

Q. And was Mr. Morris the chairman of that railroad committee?

A. Mr. Morris is chairman of the Central Freight Association, and all these railroads are members in that Association; that is, the railroads in the Central territory. This special committee, as I understand it, was appointed by the chairman; that is, he appointed representative railroad officials to handle this matter.

Q. Didn't you testify a day or two ago that you never had talked with Mr. MacFarland about your activities regarding short-haul rate reductions? 41226

A. I testified that I never talked to him about my activities in a general way. Now, if you have in mind this telephone conversation from Mr. Morris, I think it was just a courtesy on Mr. MacFarland's part in calling my attention to it.

Q. At any rate, you did have that conversation?

A. I had it because Mr. Meyers apparently could not get ahold of me on the telephone to give me the information, or ask me, so that I could give him the information.

Q. And again you are surmising that, because you are surmising you were out of town?

A. It, of course, is necessary for me to state that at this time. It is eight or nine years ago. I could not carry those things in the hammock of my memory, or what I actually did at that time.

Q. I just wanted to distinguish between what you actually recall and what you surmise or rationalize must have been the situation.

A. I am trying to give you the facts, and if you can in any way refresh my memory I would certainly be glad to enlighten you on anything that you seem to be in doubt about at this time, Mr. Wooden.

Q. Referring to Commission's Exhibit 1614, who
41227 is the party shown on that paper as "J. A. Torrer"?

A. Mr. Torrer is the chief clerk in the office of the District—that is, in the district office of the Medusa Cement Company at Pittsburgh.

Q. Can you explain why Mr. M. F. Byrne, whom you identified a day or two ago, should ask that information to be treated confidentially?

41228 The Witness: I cannot. It is addressed to a third party.

By Mr. Wooden:

Q. With a copy to you?

A. Yes, sir.

Q. Are those your initials in your handwriting in the middle of the paper?

A. Yes, sir. I noted that letter, Mr. Wooden.

Q. Referring to Commission's Exhibit 1619, a letter to you from Mr. Morris, Mr. Morris quotes a telegram from you asking, "Have you phoned Mr. Scott of the Alpha Company as to his position in this proposal?"

Why had you suggested phoning Mr. Scott of the Alpha Company?

A. For the reason that Mr. Scott did not show—or did not appear, rather, at the meeting a week previous; that is, the meeting with the railroads in Chicago to consider my proposal to reduce the rates to short-haul points on cement.

Q. Has he changed from a position of opposition to one of concurrence in your proposal?

41229 A. I do not recall that, but I do not believe that he was at that meeting, Mr. Wooden. The record will show that. There is an exhibit, I believe, in there, showing all that were present at that meeting.

Q. Well, isn't it a fact that you had the approval of all but three of the companies in favor of your proposal? I mean the cement companies in that Central territory?

A. It was either three or five; I do not recall which.

Q. Did those exceptions maintain their position without change, or did some of them change?

A. Some of them changed, Mr. Wooden, as I recall. As

a matter of fact, one company changed their mind about three times.

Q. Which ones held out to the end against your proposal for short-haul rate reductions?

A. The Lehigh Company, the Universal Atlas Company. They were the two largest companies that vigorously opposed my proposal at the hearing.

Q. And they did not change?

A. No. As a matter of fact, they were so eloquent in their oratory there that they swung over a couple of my constituents, or whatever you want to call them.

Q. Referring now to Commission's Exhibit 1624, you refer to a Mr. Raff there. Who was that Mr. Raff?

A. Mr. Raff was, and still is, I believe, secretary of the Diamond Portland Cement Company, which has
41230 a plant at Middle Branch, Ohio, on the Wheeling & Lake Erie Railroad.

Q. It was one of the companies, was it not, that was rather, you might say, unusually prominent in trucking cement?

A. Why, that company has one mill, and they did have a substantial amount of cement trucked from their plant, as I understand—I was so informed, rather.

Q. You received, did you not, from the various cement shippers in that Central territory figures showing the amount of cement that they had trucked from their mills?

A. They were requested by Chairman Morris to either send me direct—I mean either send him direct or furnish me with the information so I could in turn give it to Mr. Morris.

Q. And some of it did go through you?

A. Yes, sir.

Q. In that way?

A. Yes, sir.

Q. And where it was furnished direct to Mr. Morris you received copies of it at the same time, didn't you?

A. I might have received copies.

Q. You asked for it, didn't you?

A. Yes, I did in order to be in position to further my efforts with the railroads in the matter of securing lower rates to short-haul points on cement.

Q. Before that meeting with the railroads on April 8, 1932, you had a meeting in your room, did you not,
41231 with the various cement shippers?

A. I suggested a meeting, but it never materialized.

Q. Before going into the meeting you already had, however, communications from various parties as to their position in the matter; that is correct, isn't it?

A. I did have some letters from some of the interested parties expressing either their approval of or objection to the proposal.

Q. Referring to Commission's Exhibit 1626, a letter of yours to Mr. Lucas of the Petoskey Company, you refer to this meeting of April 8 and state that the only real opposition came from Universal and Lehigh. Can you state what the basis of their opposition was, or the grounds for it?

A. I do not know the basis, but I do recall in their opposition they tried to leave the impression with the chairman that it would create a very chaotic condition in so far as the railroads and shippers were concerned if this proposal was acted upon favorably.

By Mr. Wooden:

41232 Q. Well, what was the ground stated for such opposition?

A. They followed that statement up, as I recall, with the statement that this basis of rates had been in effect since the latter part of 1923 or the early part of 1924 and that no complaints had been registered against the basis of rates, and that was another reason why they should not be disturbed.

Q. Referring to Commission's Exhibit 1643, is that a list of names to which Commission's Exhibit 1644-A and B was sent?

A. Yes, sir. These pencil names—these names in pencil here are in my own handwriting, and is captioned, "Copies of attached letter"—meaning Exhibit 1644-A—"sent to the following."

Q. And except for those indicated as being connected with the railroads on the list, are the others on that list all connected with some cement companies?

A. All of them were at that time; yes, sir.

Q. Can you identify what companies each one was then connected with?

A. Yes, sir.

41233 By Mr. Wooden:

Q. All right. Will you do so?

A. The first name, Mr. Seeman, is connected with—as traffic manager of the Green Bag Company.

Mr. G. T. Peterson was at that time traffic manager of the Bessemer Company.

Mr. J. B. Johnson was general traffic manager of the Consolidated Company.

Mr. H. H. Lucas was sales or traffic manager for the Petoskey Company.

A. J. Sevin was traffic manager for the Columbia Company.

E. V. Apt was traffic manager for the Southwestern Portland Cement Company at Dayton or Osborn.

W. A. Davis was at that time vice-president of the Standard Portland Cement Company, with headquarters at Cleveland.

H. F. Jennings was vice-president of the Wabash Portland Cement Company.

T. C. Evans was traffic manager for the Wellston Iron & Coke Company.

F. C. Mooney was, I believe, traffic manager for the Wolverine Portland Cement Company.

J. H. Upgrove was traffic manager of the Louisville Cement Company, I believe.

41234 Ray A. Raff was secretary of the Diamond Portland Cement Company.

J. B. Davies was a railroad official of one of the Chicago railroads. I just happened to get his name down here instead of up there (indicating).

Q. Thank you.

Well, now, there are a good many other cement companies in that general area that were interested in this subject, were there not?

A. Yes, sir.

Q. Why is it that you sent that letter only to the names that appear on this Exhibit 1643 and not to others in that territory?

A. I believe you will find—doesn't it state at the top of that letter that these are additional names? That is, at the top of the other sheet that you turned over, at the top.

Q. No. It says, "Copies of attached letter sent to following." Nothing about additional names that I see (showing the document to the witness).

A. Well, I really believe that covers—with the exception of the Lehigh and the Universal—that would cover most every—

Q. No one was there from Alpha?

A. No. As I say, there was nobody there from Alpha on the April 8 meeting that I recall.

Q. But you had some from Ohio, I believe, and
41235 you had some Michigan people?

A. Yes. Mr. Lucas was Petoskey, and also Mr. Mooney, Wolverine.

Q. Mr. Cole, directing your attention to the first
41236 paragraph of Commission's Exhibit 1644-A and B, which is your letter to Mr. Morris, you say you were enclosing a Rand-McNally map of Ohio on which "we have shown the marketing area by truck from the various cement-producing points in Ohio." I am asking you where you obtained the information as to the marketing area of the other mills in Ohio than your own?

A. Well, Mr. Wooden, I had no actual knowledge of the exact marketing area. The map that I enclosed and referred to in that letter is a map supporting my application for rates to short-haul points, and pointing out to him merely the zones in 10-mile blocks up to 50 miles, and how from a railroad standpoint they would appear in my picture.

Q. Do I understand that you had no information as to the terms and conditions under which trucking was being carried on at various mills?

A. I had no way of knowing that unless somebody happened to mention in our organization one of their men out in the field said thus and so; that is the only way I can get it. I had no actual knowledge.

Q. Well, what did you mean in this Exhibit 1644-A, in which you described the control of trucking by the Huron Company and your company, and Castalia, and where you stated that under this new method of marketing cement by truck the companies just mentioned absolutely control trucking? What did you mean by absolutely control trucking?

41237 A. Just like we control railroad shipments, Mr. Wooden.

Q. And you knew, did you not, that under that new method that you referred to that the delivered price by truck was the same as the delivered price by rail, didn't you?

A. I had no knowledge of that; no, sir.

Q. Well, didn't you state in this letter of yours that it would be agreeable to load customers' own equipment but no transportation allowance will be made?

A. That information was given to me by somebody in our organization, apparently connected with the sales department, because that appears to me as a basis of sale, or I mean a part of a sales transaction.

Q. You went on to say that beyond the 20-mile zone the delivered carload price prevails. You testified here that you had no knowledge or information about delivered prices or the terms or conditions of truck delivery.

A. I stated I had no general knowledge. There is a case of a specific instance where more than likely somebody in our organization advised me of that. I was in this situation that as traffic manager I wanted all the deas anybody could give me to help me in my proposal before these railroads. If the office boy, for instance, even, knew anything about it, I would more than likely listen to him.

Q. You were not wholly without knowledge or information on the subject, then, were you?

41238 A. Well, as I explained there, I was grasping around for thoughts to express in letter form that would be helpful to me in my efforts to secure low rates for short-haul points.

Q. Do you mean to say that the separation between your traffic department and your sales department was so complete that you would not freely go to him and speak and obtain information about trucking matters?

A. Oh, no, I do not say that, Mr. Wooden.

Q. As a matter of fact, you did have free access to the information possessed by any other department of your company, didn't you?

A. It is available at any time. We often talk over problems, operating, traffic.

Q. Referring to Commission's Exhibit 1644-B, a portion of your letter to which I just directed your attention, you stated that at the present time from the plant of the Lehigh Company, at Cleveland, and the plant of the Standard Company, at Painesville, and the plant of the Diamond Company, at Middle Branch, they are still following the old plan which permits dealers or contractors to truck from their plants and the going cement freight rate is allowed for the trucking. How did you know that?

A. Well, my best answer to that would be that our men in the field more than likely, through dealers that we would sell, passed that information on to our sales depart-

41239 ment and they, in turn, imparted that information to me.

Q. You are just surmising now?

A. No, sir. I am giving you a logical reason, bearing in mind that is some six or seven years ago.

Q. You are giving a logical suggestion that that may have been the source of your information, not testifying that you recall definitely that that was the source of your information?

A. I cannot recall definitely, no, Mr. Wooden.

Q. Now, this old plan of these companies that you there refer to allow the going cement freight rate, didn't it?

A. I do not know whether it did or not.

Q. Well, you so stated in the letter.

A. Well, if I stated—anything that you see in that letter was information that I had available at that time.

Q. And that old plan that you referred plan did not permit control over trucking, did it?

A. Well, bearing in mind, Mr. Wooden, that I did not have any direct information about trucking in 1931, because—

Q. Well, this letter is April 12, 1932.

A. Yes, sir. I would not know, Mr. Wooden.

Q. Now, you undertook to say in this new plan that you would and did control trucking. I am asking you whether the old plan that you described in the letter of these other companies of allowing the going cement freight rate to be deducted, whether you won't say that that did not control trucking?

41240 A. You are speaking of "control trucking." I mention that in the sense that we entered into a contract—entered into an agreement with a contract carrier to haul our cement, and we specified to him when he should come into the plant and where he should go; that is, where the traffic—

Q. Where he should deliver?

A. Yes, sir. And that is where the traffic department finally come into the picture with respect to trucking.

Q. And prior to that time dealers could come to the plant with their own trucks and take it away, and you did not know where it was going; is that right?

A. Well, now, I personally did not know anything about that. I do know this, however, that I was informed by people in our organization that there was cement moving out by trucking, whether it was dealers' trucks—I know that it was not contract. I know that it was not moved by

contract truckers because it would have been necessary for them to enter into a contract with us and file it with the utilities commission of Ohio, and I do remember that that was not the case in 1931.

Q. You went on to say in this letter that if the plan used in Ohio eventually operated throughout the entire State it will naturally follow in Michigan, and you can readily see that the carriers would receive very little carload business under their present scale of rates up to 50 miles. Why could it be readily seen that they would
41241 receive very little carload business under their present scale of rates up to 50 miles?

A. Well, at that time the contract trucker was becoming very active in that territory, and I do know from personal knowledge that these contract truckers were taking a great deal of business away from the railroads.

Q. At lower rates than the railroad roads?

A. In some instances, Mr. Wooden, they were lower, and some higher.

Q. Generally speaking, weren't they lower?

A. No, sir; on the average they were higher, and they are today.

Q. Well, whoever heard of an average freight rate? Is there such a thing in a traffic expert's lexicology?

A. Well, when I speak of averages, I am taking the entire level of the rate and averaging it as to shipments.

Q. A good deal depends upon the variations that are included in an average, doesn't it?

A. Well—

41242 Q. All I want is the last question, in handling shipments you do not care what the average comparison between the one form of transportation and another is, do you? You want to know what the rate between certain points by one form or another is, don't you?

A. It is according to how you are viewing the situation, Mr. Wooden.

Q. I said in handling shipments.

Mr. Withrow: Let the witness finish the answer.

A. If you are making a study you naturally would average out your weighted averages, your measure of the rate. Now, are you speaking of actual shipments?

Q. Surely. I said in handling shipments you are not concerning yourself with averages, are you? You want to know what the rate between particular points is by different forms of transportation?

A. Oh, yes. That is natural. You want to know that.

Q. Well, didn't you show in your own studies an
41243 exhibit, which has gone into evidence here, rather, Respondents' Exhibit 3258, that the transportation rates by truck were less than by rail?

A. No, I did not.

Trial Examiner Norwood: He may bring that out.

By Mr. Wooden:

Q. Did not what?

Mr. Wooden: Now, read the question.

(Record read.)

By Mr. Wooden:

Q. Didn't you show in that exhibit that the transportation rates by truck were less than by rail?

A. No, sir. If you will examine this exhibit here you will find that the rates that I show as trucking rates are comparable with the basic scale of rates.

Q. I am talking about present rates in columns headed "Present Rates, Ex Parte 103." Weren't those rail rates higher than the present trucking rates you showed in the last column?

A. Well, naturally, with the Ex Parte emergency ad-
vance,—that is Ex Parte 103,—there is a slight ad-
41244 vance in the rail rate.

Q. Well, you had to take that into account in figuring the rates?

A. Yes, and that was all the more favorable to me in my argument with the railroads, that they were increasing rates, and actually not moving any tonnage on them.

Q. I understood your testimony to be that you were carrying on this short-haul rate reduction campaign entirely for the benefit of Medusa, and not as an industry movement in any way.

A. Yes, sir.

Q. Why, then, do you state in Commission's Exhibit 1644-B, in your own letter, that the proposed short-haul cement rate would not benefit our company in any large market, or, in any large market?

A. Well, I feel that I was privileged to make that statement because I wanted it to appear in the eyes of the railroads that I would not have any particular advantage over any of our competitors. That was simply a sales argument on my part to convince them that it was simply a matter

that I felt would be of assistance to the railroads from a tonnage standpoint, and if they thought I was the only one who would be benefit by it, why, the chances are I would have had more opposition than I did.

Q. When you said a moment ago that on the average trucking rates were higher than rail rates, what pe-
41245 riod of time are you referring to?

A. Well, I can take you from 1934 up to the present time.

Q. You do not mean that statement to apply to prior to 1934?

A. I can take you back to 1932.

Q. You do not mean it to apply to prior to 1932?

A. I did not know anything about trucking rates prior to 1932. There were no published trucking rates at that time—that is, prior to 1932.

Q. You also said on direct examination that the rail rates for short hauls at that time were paper rates and no traffic was moving on them. Isn't that because it had largely gone to the trucks?

A. I did not say that there was no tonnage moving on them. I simply pointed out that in Ohio alone information had reached me that the equivalent of something like fifteen or eighteen thousand carloads had moved in the year of 1931 by truck.

Q. Well, when you said that they were paper rates, you meant that the traffic was very largely moving by truck, didn't you?

A. Well, when I mention a paper rate to a traffic manager, a traffic manager will use that quite often, especially in his negotiations with the railroads; he wants to convey to the railroad. Here you have a rate published that you are not moving any freight on. Now, it is logical to assume
that if you put a usable rate in you will regain or
41246 receive additional tonnage.

Q. Well, wasn't the fact that very little tonnage was moving on those short-haul cement rates by rail due largely to the fact that trucking rates were much cheaper?

A. No, I would not say that that was the real reason. There was a matter of service in there, Mr. Wooden.

Q. You mean the truck service was superior, also?

A. I do not say, but the fact that such a large movement was moving by truck must have been an indication that the consumers, or whoever was receiving this tonnage, were satisfied, and—

Q. Getting some advantage out of it?

A. I do not know whether they were getting any advantage, but I do know this that trucking has never been discontinued from our Ohio plants, and there is just as much cement being trucked today as there was from our mills back in 1931.

Q. Do you know on what conditions and terms it is being trucked?

A. No, I do not.

Q. You do not know what the price conditions or terms are on which it is being trucked?

A. No, sir; I do not. I am just charged with the responsibility of securing usable rates in the transportation of our product.

Q. I understand you to say that you conclude that consumers or purchasers of cement that took delivery by
11247 truck along in 1931 were getting some advantages in it?

A. No. I wanted to convey this thought that here was an instance where I had knowledge, indirectly or otherwise,—I do not recall which,—that there was a large amount of cement being trucked, and I passed that information on to the railroads, not that I cared one way or the other, but it was a sales argument on my part for it, to try and convince the railroad that here was a substantial amount of tonnage that yields good revenue. It is a commodity that lends itself to ideal transportation, as far as damage is concerned. The railroads are always interested in hauling it.

Q. Well, a few moments ago I asked you if one reason or the reason why trucks were not taking the traffic away from the railroads was because their rates were lower. You suggested that the matter of service entered into it.

A. I said that might be an element—that might be a factor in there, Mr. Wooden.

Q. And you said that the consumers were evidently satisfied with it and wanted the trucking; is that right?

A. Well, I do not recall the exact words that I used this morning in answer to your question.

11248 By Mr. Wooden:

Q. It was not but five minutes ago. Can't you recall what you said five minutes ago?

Mr. Withrow: Your Honor, I submit that we should show the witness the record and correctly quote the record

to him, and not attempt to do it this way. This does not bring out any issues or any facts. We have no objection.

Trial Examiner Norwood: I think not.

The objection is overruled.

A. I would be willing to let the record speak for itself.

Mr. Wooden: Mr. Reporter, will you read back to where I asked the question about paper rates and the movement of cement by truck, because they were cheaper rates, beginning there?

Trial Examiner Norwood: The witness said there was a service consideration there; his testimony was to that effect.

Mr. Wooden: And he said something about the consumers being satisfied.

The Witness: I recall that, but I did not say that the trucking rates were lower, because I had no direct knowledge as to whether or not they were lower.

Trial Examiner Norwood: Yes. He said that. Wait a minute.

41249 By Mr. Wooden:

Q. Aside from the question of truck rates compared to rail rates, it was a fact that during that time there were dealers going to the plant and taking cement away in their trucks and the question of a cement rate did not enter into it; isn't that right?

A. You have in mind, now, prior to 1932?

Q. Yes.

A. Yes. I have been told that dealers were hauling at our plant and carting away cement.

Q. On a price made at the—

A. I don't know.

Q. Allowing them transportation?

A. I do not know, Mr. Wooden.

Q. Do you mean that as a traffic man for the company you do not know whether they were allowed transportation off the price when they came to the mill with the truck?

A. Yes, sir; for the reason that the traffic department, in so far as transportation is concerned, only concerns itself with rates that are on file with any rate regulating body.

Q. Well, now, what was this service factor that you referred to a few minutes ago?

41250 A. Service that I referred to in this letter, you mean?

Q. The service factor that entered into the situation that was represented by the loss of cement traffic to the rails.

A. Well, as I recall it, you asked me if the truck rates were lower; was that an inducement for a dealer to demand cement to be moved by truck? And I said, well, there was another factor in there I thought, and that would be service.

Q. Yes.

A. What I had in mind as service was this,—was to points within a radius of, well, up to, you might say, 70 miles. A truck could deliver a shipment of cement in about four hours as compared with, perhaps, rail movement of a day.

Q. In other words, it was quicker service?

A. In some instances it was, Mr. Wooden.

Q. And wasn't another element in that service factor that the cement could be delivered direct to the job instead of just to the rail siding?

A. Well, that advantage exists today, Mr. Wooden. That has never—

Q. It was true then also?

A. You are speaking of a period that I do not know anything about, but I will say this to you, that since I come into supervising traffic rates, 1932 to the present time, I have found instances where movement by truck
41251 would have some advantages over rail movement.

Q. That is, of going direct to the job instead of to a rail siding?

A. Yes. In some instances I would say there would be an advantage, Mr. Wooden.

Q. Now, were those things you had in mind when you said the consumers seemed to be satisfied with it?

A. That possibly might have been the reason.

Q. Well, you ought to know what you had in mind when you said the consumers seemed to be satisfied with it.

A. Yes, that might have been the reason.

41253 Q. Referring now, Mr. Cole, to Commission's Exhibit 1644-A and B, your letter of April 12, 1932, you describe the new method of marketing cement adopted by your company and Huron and Castalia. Can you tell me whether that new method you describe there has continued in effect?

A. What method? What exhibit are you reading from?

Q. 1644-A and B (handing the document to the witness).

A. Speaking for our own company, that is, the Medusa Portland Cement Company, all of our cement that is trucked is covered by contracts entered into with contract truckers, and the rates, the published rates, are on file with the Interstate Commerce Commission and the various freight rate regulating bodies.

Q. My question was whether the plan described by you in that letter then in operation by the Medusa Company has continued in effect; and, if so, to what period?

A. I could not tell you that, Mr. Wooden, for the reason that when I negotiated these rates,—I have not looked into the terms of their sales or how they are made. All I am interested in is the rate itself.

Q. Now, I call your attention to Commission's Exhibit 1675-A and B. You stated there that under the proposed rates, Medusa short-haul rates proposed, each mill within a radium of 25 miles would have a rate which would entitle that particular plant to the tonnage in that area.

Why were you proposing rates that would entitle 41254 each plant to the tonnage within a 25-mile area?

A. I was not proposing rates for any 25-mile distance.

Q. Didn't you say that under the proposed rates each mill within a radius of 25 miles would have a rate which would entitle that particular plant to the tonnage in that area?

A. I so state in this letter that I addressed to Mr. Kanengeiser.

Q. That is what I mean.

A. You understand, he could not or did not reduce my rates.

Q. I understand that. I am asking you why you proposed rates that would entitle each mill to the tonnage within a radius of 25 miles.

A. I did not propose any such basis. I was simply giving this man some of my ideas that I hoped to convince him so that he would go along with my proposal. He was one of the ones that was opposing it. I was trying to sell him on the idea that he would have some advantages. And if I mentioned 25 miles, or 20, or 30, it was just a thought that came to my mind at that time that might be of assistance in selling him on my idea.

Q. Well, didn't you say that that would be the effect under the proposed schedule?

A. I might have said it, but whether that would be an actual fact is another matter.

Q. I am still trying to find out why you said it, 41255 why you made such a proposal.

A. Now, you are getting two things mixed up. You are confusing the proposal I had with the railroad and my argument in there with an objector to my proposal. Now, let us talk about one thing at a time.

Q. All right.

Didn't you say in connection with that radius of 25 miles within which each plant would be entitled to the tonnage, in the same sentence, "and that is the only part of the proposed rate schedule that would localize each plant"?

A. I said that to Mr. Kanengeiser—

Q. Yes.

A. —in my letter. Yes, I said that to him.

Q. Well, you said a moment ago that I was trying to confuse. Now, what is the confusion about that?

A. This statement in the letter to Mr. Kanengeiser is part of my argument with him to try and convince him that he had or would have just as many advantages, or perhaps more than I would if he would go along with my proposal. Now, I said many things in that letter to him.

Q. Yes.

A. And the reason I said so many things was that I was writing to the president of a cement company trying to convince him, that is, from a traffic manager's viewpoint, that he should go along because previously, if you 41256 recall, his traffic manager had written me a letter stating he was agreeable to go along, and a few weeks later the president writes and says, "The traffic manager is all wet, and I am opposed to it."

Q. Well, you did not confine your statement in this letter that Mr. Kanengeiser's mill would have a radius of 25 miles in which the rate would give him the tonnage, but you said that each mill within a radius of 25 miles would have that tonnage.

A. I had to tell him that because it was part of my argument to convince him that he would not be at a disadvantage with any of these other mills.

Q. Well, you were not misleading him, were you? You were not telling him an untruth to make your point, were you?

A. Well, Mr. Wooden, in my letter to Mr. Kanengeiser

I was trying to place in his mind the thought that I would not be more benefited than he would. Now, that is the sum and substance of all the expressions in that letter. I was simply trying to sell the man an idea to go along with my proposal. How it would benefit him, that is another matter.

Q. Why did you say that the tonnage within the particular 25-mile radius rightfully belongs to the respective plants in that area? What was the right that they had to?

A. Well, I can't tell you what I might have had in mind. I mean I can't tell you now what I might have had in mind, but it was part of my argument with the gentleman to convince him that he should go along with my proposal.

41257 Q. Do you now see any right of the respective plants to their business within their local area?

A. As of that time, I would say that, speaking
41258 for the Medusa Company, I would have been delighted to have lower rates than my competitors for, say, 20, 30, 40, 50 miles.

Does that answer your question?

By Mr. Wooden:

Q. Is that the only answer you care to make to it?

A. At this time.

A. Yes, that is the only answer I care to make at this time.

By Mr. Wooden:

Q. Further in this Exhibit 1675-A you stated that under the proposed short-haul rates there is no large consuming market in Ohio to which any particular plant would have the advantage except perhaps at Dayton. Was that not a necessary part of your ability to put over the proposed reductions, that there be no change in the advantage possessed by one mill over another?

A. In order to secure a reduction such as I asked for there, the railroad committee would have to give consideration to either like reductions from competing mills or to check any competitive condition, which in their judgment would necessitate reductions corresponding to what I had proposed there from the Medusa mills.

41259 Q. You were proposing reductions from all the plants, weren't you?

A. No, sir.

Q. You mean that this campaign of yours to obtain short-haul rate reductions from the railroads applied only to reductions from the Medusa plants?

A. My proposal was to have rates reduced, which would naturally affect the Medusa mills, but by the same token I knew that under the basis of rates then in effect it would be necessary for the railroad committee to give consideration to like reductions from competing mills.

Q. Well, you knew, didn't you, that you could not get the cooperation or assistance of any of your competitors unless their parity were preserved?

A. Oh, yes. That is correct, Mr. Wooden. Yes.

Q. Why was the exception at Dayton, that you referred to? Why was that?

A. Well, if you will look at that map you will find that Osborn is just 18 miles away from Dayton.

Q. Yes. But why make an exception in the case of Osborn and Dayton, which you indicated there?

A. Well, if you look at the circle map you will find that Dayton was the only large consuming market, potential market, within 50 miles of any producing—of all the producing points that I circled on that map.

41260 Q. Under the proposed rate reductions?

A. Yes, sir.

Q. Well, under those reductions was the Southwestern Company at Osborn,—was its parity with other mills,—how was it affected?

A. Well, as I recall the basis at that time, the same relationship existed; that is, the measure of rates.

Q. But under the proposed reductions, where you said there would be an exception at Dayton in the matter of retaining the parity of the various mills, how was that exception at Dayton? How did that affect the parity of the Osborn mill with other mills?

41261 A. I can clear that up in just one minute if you get the map in front of you.

By Mr. Wooden:

Q. Which map?

A. That is one with the circled zones on it.

41262 Q. Respondents' Exhibit 3253? Is that the one?

A. Yes, sir.

Now, you notice, Mr. Wooden, as we look at this map here, you will find that in the center of the first zone,—that is, in the exact center,—there is the little town of Osborn; and then from there you go out to the outer edge, which is 50 miles, and you come down southwest just about 18 or

20 miles, and you find the town of Dayton, just within the first or second zone.

Now, what I mean in there was this, that from all these other producing points, these producing points would not hit any big consuming towns, and the only one would be Osborn. That is what I had in mind.

In other words, if these rates were adopted for me, they naturally give them the same level that I had. That is, the measure would be the same up to 50 miles.

And in this case, this man down here at Osborn would go into Dayton, but if you notice all these other mills, they don't hit—now, for instance, here is—well, take Middle Branch, for instance, 50 miles, just goes over a little above Akron there (indicating). They don't come within the 50 miles. Neither does the Medusa Company go into Cleveland, which is a large market.

That is what I had in mind.

Q. You do not have in mind what I have in mind.

41263 A. Oh, no. We are talking about two different things.

Q. I want to know this: Did the exception with regard to Dayton and Osborn that you mentioned in your letter, under that exception would the position of the Osborn mill with reference to consuming markets have been improved or not?

A. I could not say whether it would be improved or not, but here is what they would have: They would have the same measure of rates under the reduced plan as the other mills in Ohio. Now, for instance, if their rate into Dayton, say, was 6½ cents at that time; and under my proposal—I do not recall the exact figure, but, say, for instance, it went down to 3 cents, they would have a rate of 3 cents from here to there (indicating). This man here (indicating) would have a rate 3 cents from here to eighteen miles. This man here (indicating)—if you are following me—at Fultonham would have 3 cents for the 18 miles. It is just the measure of rates we are speaking about.

Q. You are not answering the question.

A. If you look at my letter, you will find that is what I was trying—

Q. You are talking all around the lot.

A. No. That is what I was talking about with Mr. Kanengeiser. We are speaking of the rates.

Q. Yes. Here is what you told Mr. Kanengeiser, again: "Under the proposed short-haul rates there is no large consuming market in Ohio to which any particular
41264 plant would have the advantage, except perhaps at Dayton."

A. I meant from a rate advantage.

Q. Yes, I know you meant from a rate advantage.

A. And here is Osborn, Ohio, just 18 miles from Dayton (indicating). That is what I mean by that.

Q. Well, under the proposed rate would the Osborn mill have improved its position with regard to consuming markets, or would its position have been injured?

A. I could not tell you that. Their rate—they would have a lower rate to the large consuming market of Dayton, which is mentioned in my letter.

Trial Examiner Norwood: It would not relate to any of the others? Is that right?

The Witness: It would have a lower rate relatively, distance considered, than from any other producing point in Ohio.

By Mr. Wooden:

Q. As a traffic expert, you cannot express an opinion upon the question whether the Osborn mill's position regarding consuming markets would have been improved or injured under the proposed rate reduction?

41265 A. From a rate standpoint, as I pointed out, they would have an adjustment, a relative rate adjustment.

By Mr. Wooden:

Q. Which way?

A. Downward.

Q. Their position would have been improved, then, under the proposal; is that right?

A. As far as the rate was concerned.

Q. That is what I mean.

A. Yes, sir; as far as the rate was concerned, the freight rate.

Q. That is what I was trying to find out for a long time.

A. I certainly explained it to you.

Trial Examiner Norwood: Go ahead.

Q. I call your attention to Commission's Exhibit 1678, a letter to you from Mr. Kanengeiser. He says there: "There is not a thing in the world from stopping the Osborn mill from establishing dealers in Cincinnati and af-

fecting truck delivery under the lower freight rate and the situation in that town would then be just what the barges made it in the past."

41266 What was the situation in Cincinnati that the barges had made it in the past?.

A. Well, I am sure, Mr. Wooden, that I can't tell you what this man had in his mind when he makes these statements. Here is the president of the company, the head of the sales department, and all the other departments, telling me about conditions in certain sections of the country, which I would not know anything about.

Q. You did not know anything about conditions in Cincinnati and the effect of barge transportation upon conditions in Cincinnati?

The Witness: I would not know what the conditions were.

By Mr. Wooden:

Q. Is it your testimony that you never did know
41267 anything about conditions in Cincinnati as affected by barge transportation of cement?

A. Information might have come to me through the years that there was cement transported on the Ohio River.

By Mr. Wooden:

Q. By barge?

A. By barge; yes, sir.

Q. And what was the condition or situation resulting from that barge transportation of cement?

A. How do you mean that, Mr. Wooden?

Q. In any way that you know, what was the condition that resulted from it?

A. It never affected our freight rates from—our shipping rates from Bay Bridge or Silica, and those would be the two mills that we would ship cement from to Cincinnati.

Q. My question is: What conditions do you know of in Cincinnati that were affected by barge transportation of cement?

A. And I told you, Mr. Wooden.

Q. You have not. I beg your pardon.

A. I told you the only conditions that I knew of was that there was cement moved in by barge, but that our freight rates had not changed from Bay Bridge or
41268 Silica to Cincinnati as a result of the movement of cement by barge. Now, that is the only condition—

Q. When was this barge transportation into Cincinnati that you referred to?

A. When was the movement?

Q. Yes.

A. I do not know when it started. It might have started three or four years ago, or five years ago, or six years ago.

Q. You mean subsequent to this letter that I am asking about?

A. There might have been a movement then. He mentioned—if he says there is a movement, he must know.

Q. He is talking about the past even then, 1932.

A. I could not say whether the movement was 30 years, or 10 years.

Q. Wasn't the condition in Cincinnati resulting from barge transportation similar to conditions resulting from truck transportation?

A. If there was it was never called to my attention.

Q. You say you do not know that conditions in Cincinnati resulting from barge transportation were similar to the conditions resulting from truck transportation?

A. I said I did not know of these conditions in Cincinnati that you speak of.

41270 Q. Mr. Cole, referring to Commission's Exhibit 1701-A and B, being a letter of yours to Mr. Kanengeiser, dated March 28, 1932, speaking of the proposed short-haul rate reductions, you say that even though the base mill adjacent to Dayton would be benefited, it is assumed under present conditions there would be no price revision downward. Whose assumption was that?

A. That term I used there was perhaps the thought that came into my mind at the time I wrote that letter, whether it was my own or something I had picked up in my duties or travels.

Q. It was your assumption, though, was it?

A. Yes, and—

Q. When you say it was—

A. And what I was trying to do there was to convince Mr. Kanengeiser that he would have some advantage if he would go along with my proposal. Now, as to these
41271 assumptions in there, they were part of my sales talk to convince him.

Q. You went on to say immediately after that, "In fact, from my observation there will be a tendency to elim-

inate various bases now active and revert back to procedure followed several years ago with which you are familiar." What was the procedure that you were referring to there?

A. Well, I was trying to convince a president who knew, no doubt, a lot about sales, that I knew something about them, and the terms I used there were, of course, things that came to me out of my own mind, or some thoughts that somebody might have told me about, but I was trying to place myself in position to make him believe that I knew something about sales.

Q. What was the procedure that you stated there will be a tendency to revert back to?

A. Well, I cannot recall at this time just what that procedure was, Mr. Wooden. That would take you back, or take us back—let me see, that letter was written in 1932—several years ago would be 1928, that is about 12 years ago.

Q. 1928, why do you say 1928?

A. Well, I said several, and taking several from 1932 might leave '28; that would be 12 years ago.

Q. The bases that you talk about eliminating or being eliminated were basing points, weren't they,—used for pricing purposes?

A. That would be possible. All those terms in 41272 there were terms that I was putting on paper trying to convince him that I knew something about sales, and was combatting his arguments trying to convince him that he should go along with this rate proposal.

Q. You said from your observation there would be a tendency to eliminate various bases now active. What observation did you have?

A. Just what I mentioned to you a moment ago, just thoughts that came into my mind at the time I wrote the letter.

Q. You were trying to convince Mr. Kanengeiser at that time that you knew something about sales and you have been trying to convince me here that you do not know anything about sales; is that correct?

A. Oh, that is a different proposition, Mr. Wooden.

Q. Why?

A. Well, for this reason, that I could not say to the railroad what I said to Mr. Kanengeiser. When I wrote a letter to a railroad, I talked about rates. Now, in my let-

ter to Mr. Kanengeiser in addition to talking about rates I was trying to convince him that he would have an advantage like I would have and in that letter I used terms, as I stated before, trying to convince him that I knew something about prices or bases or whatever terms I used in the letter.

Q. Well, do you now say that you did not know anything about it?

41273 A. That is a fact, I did not know anything about it.

Q. And trying to convince a man who did know something about it, the president of this company, trying to convince him that you did know something about it?

A. For the reason that I wanted to convince him that he would have an advantage, just like I would.

Q. Are you trying to convince us now that you did not know anything about it, and did not know anything about it at the time you represented to Mr. Kanengeiser that you did know something about it?

A. I am not trying to convince you now that—I am simply trying to tell you, I have been trying to tell you since yesterday that my letter and the thoughts expressed in there, in so far as they use terms, such as bases, and markets, were expressions that were gathered some place, to place me in position to try and convince Mr. Kanengeiser that he would be benefited just like I would.

41274 Now, the reason I mention those things is because he brings them up in a previous letter to me, and if I had failed to answer that letter at that time I assumed that the thought running through my mind, well, I must answer this letter, he has not absolutely turned this down and perhaps I can convince him that I am still right.

By Mr. Wooden:

Q. I understand you cannot tell us now what the procedure followed several years before the time you wrote was with reference to basing points?

A. No, I cannot, Mr. Wooden.

Q. Were you aware that in 1931 some basing points were established at mills by other mills who had no mills at the points where the basing points were established?

A. I cannot recall that I was aware of that, Mr. Wooden.

By Mr. Wooden:

Q. Well, weren't these mills or bases that you said in

your letter there would be a tendency to eliminate some various bases then active, weren't those the basing points at which bases had been established under those conditions that I just outlined?

41275 A. No, sir. I would not.

By Mr. Wooden:

Q. Well, what were the various bases now active that you refer to in your letter as there being a tendency to elimination of?

A. I would not know, Mr. Wooden. My previous explanation, it seems to me, is very clear on the subject.

Q. You must have known what bases you had in mind in your letter at the time.

A. Somebody might have told me at the time to try and support or help me in my argument with Mr. Kanengeiser.

Q. Do you say you never learned at that time about the establishment of basing points at mills by other mills who were not located at the point where the bases were established?

A. To the best of my knowledge—as a matter of fact, I would not have any reason to know about those basing points.

Q. Is it your answer that you never did know about it?

41276 A. That is, to the best of my knowledge and belief; yes, sir.

Q. Now, in this same exhibit, Commission's Exhibit 1701, you give a list of companies that were in favor of the proposal, the proposed short-haul rate reduction. How did you ascertain that those companies were in favor of it?

A. Why, they perhaps either called me up or dropped me a note.

Q. You have said that you had no intention of minimizing or completely ending trucking in your short-haul rate activities.

A. That thought was never in my mind, Mr. Wooden. I was only concerned with securing reduced rates from our mills.

Q. Do you mean to say that you had no knowledge that other companies, your competitors, were not interested in minimizing or completely ending trucking?

41277 A. I had no knowledge of that, to the best of my recollection.

By Mr. Wooden:

Q. I call your attention to Commission's Exhibit 1708. It is a letter that you received from the Wabash Company, isn't it?

A. Yes, sir; that is a letter dated March 28 from Mr. Jennings.

Q. And it contains your initials on it, and your handwriting, doesn't it?

A. Yes; this is my initials; show that I received that letter.

Q. How do you explain your last statement that you had no knowledge of any competitors' intention to eliminate trucking with this statement here addressed to you?

A. If you will recall my answer, I said to the best of my recollection. Now, you had that letter in front of you when you asked me that question. It is dated in 1932, about eight years ago. If you had showed me that letter I would have had agreed that I did receive the letter.

41278 Q. And that you did have some knowledge of what your competitors wanted to do about trucking?

A. As far as that letter shows.

41279 Q. Mr. Cole, showing you this exhibit, Commis-
sion's Exhibit 1708, and calling your attention to
41280 the second paragraph of the letter do you state that the short-haul rates proposed by you would have tended to minimize or possibly altogether extinguish the trucking of cement from the various plants?

A. I would say that in the event my proposal had been favorably acted upon there would have been some of the tonnage reclaimed by the railroads.

By Mr. Wooden:

Q. To that extent you agree with Mr. Jennings that the proposed schedule would minimize the trucking of cement from the various plants?

A. It would not, no; I would not say it would minimize it. It would reduce the tonnage somewhat. To what extent, it would just be a guess on my part.

Q. Do you distinguish between reducing it and minimizing it?

A. I won't argue with you about it, Mr. Wooden. I would like my statement there of my explanation, rather [illegible] or, I mean, to make an answer to your question.

Q. Referring to Commission's Exhibit 1731, can you tell me who Mr. Waterbury and Mr. Scott were that
41281 were referred to in that letter addressed to you?

A. Mr. Waterbury was traffic manager for the Lehigh Cement Company in Chicago, and Mr. Scott was traffic manager for the Alpha Company in Chicago.

Q. What was the Milwaukee situation that was referred to in this letter to you, Commission's Exhibit 1731?

A. I do not know what Mr. Tuttle had in mind when he said that he did not think my proposal would have any effect, "I do not think it would have any effect on the Milwaukee situation."

41282 By Mr. Wooden:

Q. You do not know what that Milwaukee situation was he referred to?

A. I cannot recall at this time, Mr. Wooden. I am sorry.

41283 Q. Mr. Guy in this letter to you, Commission's Exhibit 1738, said that a meeting in New York the latter part of the week of March 21 would suit him very well. Was the meeting held about that time?

A. No, sir; as far as I recall, Mr. Wooden. The only meeting I ever attended was April 7th.

Q. In Chicago?

A. In Chicago, with the railroad men.

Q. Referring to Commission's Exhibit 1743, a
41284 letter of yours to Mr. Guy with a copy to Mr. John, of your company. You refer there to a meeting the latter part of January in New York. Who was present at that meeting?

A. As I recall, and as I stated on direct, that was a meeting during lunch with Mr. Gubernator, and, as I recall, I think Mr. Guy's assistant, a man named Collister,—there might have been another man, another representative—let's see, Mr. Apgar might have been there.

Q. Who was he with?

A. He was with the Alpha in eastern Pennsylvania—that is, he was the eastern traffic manager.

Q. Do you mean to say there was not anyone there except these representatives of these eight companies and yourself?

A. That is all I recollect, and it was not any meeting

that was prearranged except that I happened to meet Mr. Gubernator in New York, and he suggested we have lunch, and he said that he and several others were attending a trunk line meeting, and I recall I had some expert matters to take care of, and I arranged to meet him downtown at lunch.

Q. And it was at that meeting, was it not, that it was agreed to submit the proposed revision of short-haul rates to other cement companies?

A. The substance of that—that is, the result of that meeting, Mr. Gubernator objected to the proposal I had in mind, but he said, "I can't stop you from having this, 41285 or asking for this meeting in Chicago with the railroads."

And I said, "Well, will you attend?"

He said, "I will try to."

Mr. Collister, being located in New York, stated that he would have to be neutral on it, but he would pass the information on to his boss, Mr. Guy.

Mr. Apgar, if I remember correctly, said he would have to confer with his vice-president.

Q. Wasn't it finally—

A. So, if I can follow this up and give you this picture, after I returned to Cleveland I wrote—I either wrote to Chairman Morris or the cement company traffic representatives, particularly in Ohio, that I had a conference in New York with several traffic representatives of cement companies, and I might have used the term "it was agreed that a proposal should be filed."

Now, Mr. Gubernator, of course, objected in the first place, and he was one of the chief objectors when the meeting was held to this proposal.

Mr. Guy, subsequent to the meeting, wrote me and in the letter he stated several objections as to why he did not think that that proposal was proper.

Q. Wasn't it finally agreed at that meeting to submit the suggested bases of rates to the other cement companies?

A. No. That was my proposal to them. I said to 41285 these men that were there that I would like to have their support in my proposal, knowing that the railroads would insist upon all the interested shippers being present to express their views, and I thought, as a short cut, if I could convince not only those two or three men but

the other mills in Ohio it would assist me materially with the railroads.

Q. If there was not any agreement to do what I asked you at that meeting, why did you state in your letter, Commission's Exhibit 1743-A, that "at the meeting in New York the latter part of January, at which time it was finally agreed to submit the suggested bases to all the cement companies in the so-called 12710 territory"?

A. Well, I would like to answer that this way, that no doubt at that conference Mr. Gubernator suggested that I poll these fellows to get their views. He seemed to be of the opinion, Mr. Wooden, that I was all wet on my proposition, and he did not think I could get very far, but I thought I could.

Q. You now say that your letter,—what you state in your letter as I called your attention to,—is incorrect?

A. No. I think that letter speaks for itself there, with my explanation.

Q. And you did submit the suggested basis to the other cement companies after that, did you not?

A. I do not know whether I submitted a basis, but I believe I wrote them a letter and asked them if they
41287 would be interested enough to come to Chicago and sit in on a meeting with these railroads in Central Freight Association to discuss the possible reduction of rates to short-haul points on cement.

Q. Well, you submitted your circular and heard from the companies to the effect that with two exceptions they favored the proposed revision, didn't you?

A. Now, Mr. Wooden, when you refer to a circular you should have added there, "circular letter."

By Mr. Wooden:

Q. All right.

A. And I did—as a result of that circular letter, I did hear from some of the interested companies.

Q. And the circular letter described the proposed revision, didn't it?

A. The letter, the circular letter, is dated January 29. I would like to look at it, if I may.

By Mr. Wooden:

Q. You are referring to Respondents' Exhibit 3255-A and B.

A. Yes, sir.

41288 Q. Now, in Commission's Exhibit 1743-A you refer to a meeting on January 7 with the eastern traffic executives and some of the cement manufacturers, including the president of the National Builders' Supply Association. That was Mr. W. W. Campbell, wasn't it?

A. I understood so; yes, sir.

Q. What was the source of your information about that January 7 meeting?

A. I heard about this meeting some time after it had occurred.

By Mr. Wooden:

Q. Through what source?

41289 A. If I remember it correctly, I heard it from two sources; I heard it from Mr. MacFarland and several railroad officials.

41290 Q. Mr. Cole, name as many of the cement manufacturers who attended that meeting as you can.

Mr. Withrow: What meeting are you referring to?

Mr. Wooden: The meeting of January 7, referred to in this same exhibit.

A. If I remember correctly, Mr. MacFarland told me that he represented the Medusa Company and the Manitowoc Company. That is all I recall him telling me of the manufacturers that were present.

By Mr. Wooden:

41291 Q. But you did understand that there were more present, than that?

A. No, sir.

Q. Why did you say some of the cement manufacturers were there?

A. Well, there was a representative there representing two companies. That would be some companies.

Q. They were both part of the Medusa organization, weren't they, the ones you named?

A. And the Manitowoc Cement Company.

Q. Wasn't that connected with Medusa in any way?

A. Yes, but it was operated as a separate company.

Q. Referring to Commission's Exhibit 1743-B, what did you mean by your reference to the "one-unit companies" favoring the revision? What were the one-unit companies?

A. The term I used there, one-unit companies, I meant such companies as Castalia, Petoskey, and any company just operating one mill.

Q. Were these one-unit companies particularly favorable to trucking?

41292 A. I would not know, Mr. Wooden.

By Mr. Wooden:

Q. Well, why, in your letter, Exhibit 1743-B, did you say "these one-unit companies who in the past had been particularly favorable to trucking"?

A. The only way I would know that would be from information that was given to me by perhaps our sales organization.

Q. Your knowledge at that time was fresher and better than it is eight years later, isn't it?

A. Naturally, it is fresher now.

Q. No; fresher and better at the time you wrote it than it is now?

A. Oh, naturally, it would be, yes.

Q. Was it the one-unit companies as distinguished from the chain companies that were more favorable to trucking?

A. I would not know, Mr. Wooden.

Q. Referring to Commission's Exhibit 1765-A and B, your letter to Mr. Collier, in the third paragraph you stated, "It is my understanding one or two meetings were held by eastern railroad executives with the president of the National Builders' Supply Association and several manufacturers' representatives." What was the source of your information as to that statement?

41293 A. That source of information was the same as I mentioned a few moments ago. I heard it from several railroad officials, and also Mr. MacFarland advised me. That is the same meeting I have in mind.

Q. This says, "one or two."

A. Well, all I recall is one, although my letter, I notice, stated "one or two." Now, there may have been one or two; I do not know, Mr. Wooden.

Q. Referring to Commission's Exhibit 1765-B, you state that Mr. W. W. Campbell, president of the National Builders' Supply Association, had conferred with Mr. Collier on the matter of truck competition. How did you know that?

A. Why, I recall that Charley Brister of the New York Central told me about this. He said that Mr. Campbell,

president of the National Builders' Supply Association, had conferred with the chairman of the so-called traffic executive committee. Mr. Brister, I think, was—well, he is vice-president and is on that executive committee, I understand.

Q. Did Mr. Campbell attend the meeting to which you were referring here?

A. Well, I do not know whether he did or not. I was just passing on there information that was given to me, Mr. Wooden.

Q. Well, this is a meeting yet to be held at the time you wrote it, isn't it?

A. What is the date of the letter?

41294 Q. February 12, 1932? Well, you said you would have no objection to Mr. Campbell attending the proposed meeting if he so desires.

A. Well, the proposed meeting, as I mentioned in this letter, dated February 12, was the proposed meeting in Chicago which was held on April 8 before the railroad committee.

Q. All right. Did Mr. Campbell attend that meeting?

A. No, sir.

Q. Is it your testimony, Mr. Cole, that your efforts to obtain short-haul rate reductions had nothing to do with meeting truck competition?

A. It was—my efforts were solely for the purpose of securing reductions in shipping rates for the Medusa Cement Company and the transportation of its products.

Q. Will you endeavor to answer my question?

41296 Trial Examiner Norwood: Can you answer that "yes" or "no"?

The Witness: No, I cannot, Your Honor, because in my argument with the railroads I had to point out to them the competition that was facing them in connection with truck shipments.

By Mr. Wooden:

Q. Why can't you answer it "yes" or "no," Mr. Cole?

Mr. Withrow: The witness just explained. I object.

Trial Examiner Norwood: He can give another answer, if he wants to.

Overruled.

A. I have given you the best answer I could, Mr. Wooden.

By Mr. Wooden:

Q. Do you wish to make any change in your testimony on direct, page 40881, lines 8 to 13, where you said: "It was unregulated trucking, and I was not concerned with this trucking, except that it did give me some advantage in that I could inform the railroads that they had this competition, and I thought that it would be helpful to my company by bringing that to the railroad's attention
41297 that they were faced with this competition."

Mr. Withrow: Your Honor, I do not know of any basis for asking the witness to change his testimony. This is just the precise reason he gave to the preceding question.

41298 Q. You mean to say, Mr. Cole, that your efforts on short-haul rate reductions had no connection with meeting truck competition?

A. I did not say that, Mr. Wooden.

Q. I ask you if you mean to say it.

A. I do not mean to say it.

Q. Do you mean to say that it did have some connection with meeting truck competition?

A. My efforts and part of my arguments in support of my proposal—

Mr. Wooden: I submit the witness is not answering the question.

The Witness: I am answering the question.

Trial Examiner Norwood: Let him finish.

41299 A. In the testimony that you just showed me, Mr. Wooden,—that is, yesterday's testimony,—I recall that just a few moments ago I gave you the identical answer that appears in that record.

Mr. Wooden: Will you read my last question, please?

(Question read.)

A. What do you mean by "did have some connection"? What? What are you talking about?

By Mr. Wooden:

Q. Your efforts on short-haul rate reductions.

A. My proposal to the railroads is a matter of record in this case. It is a letter to the railroads, and in that letter, or letters, I pointed out to the railroads that they were faced with truck competition.

Q. Then, you—

A. And I had to do that in support of my application because without that I did not have a foot to stand on.

Q. Then, you admit that your efforts did have some connection with meeting truck competition?

41300 A. What do you mean by my efforts?

Q. To get the short-haul rate reductions. How many times do I have to explain that to you?

A. If you would be a little more clear we would not have all this argument.

Trial Examiner Norwood: Now, you answer the question, if you can, but do not argue with counsel. You are under oath.

The Witness: He seems to be arguing with me.

41301 Trial Examiner Norwood: Does that complete your answer?

The Witness: Yes.

Mr. Wooden: Well, it does not answer the question which is pending.

Trial Examiner Norwood: Well, you might ask another.

41302 The Witness: Ask me another one.

Mr. Wooden: Will you read it? I do not feel quite able to reframing a new question on the same point.

(Last question read as follows:

"Q. Then, you admit that your efforts did have some connection with meeting truck competition?")

Trial Examiner Norwood: Is that true, or not?

The Witness: Well, the railroads did not meet the truck competition, so I just do not understand the question, Your Honor.

By Mr. Wooden:

Q. Your efforts had some connection with meeting truck competition, didn't they?

A. It did not meet truck competition. The railroads did not meet the truck competition. Now, you are saying to me, "Your efforts had something to do with meeting truck competition." I do not quite understand the question, Mr. Wooden.

Trial Examiner Norwood: I think the facts are out on this matter, and I really think we have exhausted the subject.

Go ahead.

By Mr. Wooden:

Q. Now, as I understand it, Mr. Cole, the old rate relationship that existed as created by Docket 8182 has continued to exist?

41303 A. 8182? You are talking about rates out in Iowa, now?

Q. The old rate relationship created by Docket 8182, is what I am talking about.

A. Well, as far as I know, the 8182 basis of rates applies only west of the Mississippi River, and it was established in 1918, and there was five supplemental hearings after that covering a period of about nine years. I believe the last hearing was 1927.

Now, so far as I know those rates are on the mileage basis, subject to any increases that might have been ordered by the Interstate Commerce Commission.

Q. Well, after 1933 were there any changes in the rate relationship created by Docket 8182?

A. 8182? If you wish, I could give you the complete history of the 8182 scale of rates from their inception up to the present time. It is just a matter of quoting the Interstate Commerce Commission, because they were the ones that put in these rates.

Q. I do not want a complete history. I want to know whether those rate relationships changed after 1933.

A. After 1933?

Q. Yes.

A. Well, there was some changes in the Ex Parte—as a result of the Ex Parte hearings on emergency rates, and then—

Q. That did not change the relationship of the 41304 rates, did it?

A. No, I do not think it did, Mr. Wooden.

Q. Mr. Cole, do I now understand that there have been no changes in the rate relationships created by Docket 8182 since 1933?

A. As far as I can recall, Mr. Wooden, there has been no change except the Ex Parte—that is, no change in relationship as far as I know.

Q. Why did you go out of your traffic field to say, as you did in Commission's Exhibit 546-2-I and 2-J, that without an agreement between all units in the industry, as far as Wisconsin is concerned, to arbitrarily refuse to load trucks the old relationship could not be maintained?

Mr. Withrow: Just a minute. What part of 2-I and 2-J is that in?

Mr. Wooden: The fourth paragraph.

A. Did I write that letter, Mr. Wooden?

Q. Yes, sir.

41305 Trial Examiner Norwood: Show him the letter.

(Mr. Wooden shows the letter to the witness.)

By Mr. Wooden:

Q. Is that your signature to it?

A. That is my signature. Now, may I read the letter?

Q. Yes, sir.

A. Or that part that you referred to?

(The witness reads the letter.)

The Witness: May I have that question read, Your Honor please?

Trial Examiner Norwood: Read it.

(Question read.)

A. That statement, Mr. Wooden, was—I was quoting the contents or part of the contents of a letter that I had just received from Mr. Vanderwerp.

By Mr. Wooden:

Q. There is no quotation marks on there, is there?

A. No, sir; I do not say that I said—the latter part of the paragraph, I was quoting the substance of a letter that I had received from Mr. Vanderwerp.

Q. I see.

A. Incidentally, Mr. Wooden—

Q. Mr. Vanderwerp was the executive vice-president of your company?

A. No; he has never been the executive vice-president.

41306 Q. What was his position?

A. He is vice-president in charge of operations, and at that time—however, at that time, Mr. Wooden, I believe you will remember Mr. Dawson's testimony, Mr. Vanderwerp was located in Chicago, having recently moved from—that is, when the consolidation was made with the Manitowoc mill, and Medusa, he was stationed in Chicago supervising sales for both the Manitowoc and the Dixon plant.

41308 Q. Will you explain, Mr. Cole, wherein the refusal to load trucks involved the loss of customers' good will, as you stated in this letter, Commission's Exhibit 546-2-I and 2-J?

A. As I stated, Mr. Wooden, in my previous answer, all this information contained in the fourth paragraph and the fifth paragraph consists of Mr. Vanderwerp's ideas, and all the information I show in here as to trucks and

loading of trucks, came to me in a letter from him, and I am simply restating it to Mr. Cleveland, the vice-president of the C. & N. W. Railroad.

Q. Will you tell us which companies in Wisconsin were not willing to pass up the loss of customers' good will? You said there were one or two of them.

A. No. That is the information—I could not tell you that because that was the substance of Mr. Vanderwerp's letter, and that is part of his letter; that statement is contained in there. He mentioned customers' good will, and so forth.

41309 A. Mr. Wooden, I was simply restating in my letter the substance of a letter that I had received from Mr. Vanderwerp, and Mr. Vanderwerp's letter did not disclose those companies to me.

By Mr. Wooden:

Q. All right.

A. As far as I can remember.

Q. You testified, Mr. Cole, to a saving that would result to the Medusa Company if you got a reduction in
41310 the short-haul railroad rates; is that correct?

A. I believe I did, Mr. Wooden.

Q. Well, in so far as dealers were sending their trucks to Medusa mills for cement, taking care of all the hauling costs in their own trucks, how could a reduction in the short-haul railroad rates result in any savings to the Medusa Company on that kind of business?

A. I do not recall that I was ever advised about dealers sending their own trucks and taking care of their own expense. You are now talking about a period in 1931, about which I know nothing of.

Q. But you have testified to it, haven't you?

A. I think—on some questions you asked me, I think I said it would come to my attention that there was trucking in 1931, some of which I understood had moved in dealers' trucks or trucks that the dealers had sent to the mill, but I did not say anything about the cost, or whether that was at their expense, or whether it was our expense. As a matter of fact, I do not know what happened in 1931.

Q. Assuming that the dealers sent their own trucks to the mills, the Medusa mills took it away in their own trucks, there could not have been any saving to the Medusa Company by getting a reduction in short-haul railroad rates on that business, could there?

41311 A. I do not know how I could get reduced rates from the railroads on the assumption that you cite there.

By Mr. Wooden:

Q. But if you did get them there would not have been any saving to Medusa on the business that moved in dealers' trucks, would there?

A. I do not know.

Q. As a traffic expert, aren't you able to state affirmatively or negatively on that question?

A. Well, I do not know the basis of sales. You would have to take that up with the sales manager or somebody in the sales department. I do not know how those arrangements were made with those trucks. They were unregulated; they were private trucks; I suppose some were borrowed trucks, perhaps.

Q. Now, referring to this application that you made for a reduction in short-haul rates in 1927, made to the Western Maryland Railroad Company, was that on account of truck competition that you made that application?

A. I believe it was, Mr. Wooden.

Q. Did you get the reductions you applied for?

41312 A. If you are referring to a question that was asked me on direct examination.

Q. I am.

A. And it applied from York, Pa., it is my recollection that I stated that there was a reduction made in the rate by the Western Maryland Railroad.

Q. Was that on your application?

A. It was on my application to the individual railroad.

Q. How many points did you seek reduction to?

A. As I recall, it was a rather large road job involving about 40,000 barrels of cement, and I believe it was destined to one point. Now, that might have affected intermediate points temporarily. This reduction was made just for the life of the job, the road job.

Q. That reduction had the effect, did it not, of giving your York mill a higher mill net than it would have obtained otherwise?

A. It gave us a cheaper rate than we had before the reduction was made.

Q. It operated to give you a higher mill net, didn't it?

A. Well, any rate, any shipping rate, on which we actu-

ally use—that is, to reduce it naturally, creates a saving in freight charges.

Q. Which shows itself in a higher mill net?

A. Well, I—do you mean by a higher mill net—
41313 what do you mean by that, Mr. Wooden?

Q. Aren't you familiar with the term "mill net" as used in the cement industry?

A. Well, I have heard the term used. I have never actually worked one out myself.

Q. You know what it means as used in the industry, don't you?

A. I would rather be enlightened on it, so I can answer your question intelligently.

Q. You say you do not know what it means?

A. I did not say that. I say I do not know just exactly what it means. I can give you some guesses here if you want me to.

Trial Examiner Norwood: Well, you answer it according to your understanding of the term "mill net."

The Witness: Well, I would assume, Your Honor, that to me a mill net would mean that there would be a reduction therefrom of the transportation charge, or either added to it; I do not know which it is.

Trial Examiner Norwood: Well, the question was, would the reduction of the mill rate and the consequent savings result in a higher mill net. Could you answer that?

The Witness: No, I could not. I could answer this way, that there surely would be some sort of saving in the
41314 way of freight charges to the Medusa Company, I imagine.

By Mr. Wooden:

Q. Well, wouldn't that saving reflect itself in a higher mill net?

Mr. Withrow: Your Honor, I—

Trial Examiner Norwood: Well, I think that he has been clear enough. He said it was a saving to the mill.

Mr. Withrow: It is a matter of argument; if the price remained the same obviously the net, as we view the term here, would be higher, and if the price were not, it might not be. It all depends on—

Trial Examiner Norwood: It is a matter of computation?

Mr. Withrow: And the conditions you have to take a specific instance to find out.

Mr. Wooden: I am talking about this particular instance in 1927 at the York mill.

Trial Examiner Norwood: I think he has covered that. Go ahead.

By Mr. Wooden:

Q. Well, if the saving from the railroad rate-reduction in that instance was to do the Medusa Company any good, it was because it reflected itself in a higher mill net, wouldn't it?

A. Well, I would not know about that because I would have to know, I imagine, have to know what the price was, and things like that; and I do not bother with prices. I was simply asked to check into this truck competition and try to secure a low railroad rate, which I did, and I forgot about it after that. That was,—my job had been accomplished on that particular subject. What the company did, and what their mill net was, it was no concern of mine.

Q. If your York mill had been a basing-point mill at that time it would not have reflected any saving to the York mill, would it?

Mr. Withrow: Your Honor, I object to this. It cannot possibly elicit any information.

Trial Examiner Norwood: I think he disclaimed any knowledge on this particular subject.

Mr. Wooden: I am entitled to show the extent to which this traffic expert disclaims knowledge on all these subjects.

Trial Examiner Norwood: I think Counsel has questioned him on that.

Read the question.

Mr. Withrow: I further object. It is beyond the scope of the direct examination.

(Question read.)

Trial Examiner Norwood: Well, he has testified as to this traffic saving there.

The objection is overruled.

A. I would not know, Mr. Wooden.

Q. Now, coming to this application that you made for reduced short-haul rates in 1929. I understood that that was a large contract involved there; is that right?

A. As I recall my testimony there were two instances where I applied for a direct reduction, and in the other cases I called the railroad's attention to the fact that a competitor was asking for a reduction at some other point, and the inference in my letter was that if there was going to be a reduction in rates I wanted to be around when they were passing it out.

Q. My question was that that involved another large contract, didn't it?

A. I do not think it did. One was 40,000 barrels, and the other was much less than that, Mr. Wooden.

Q. Do you mean the 1929 application was less than that?

A. Well, the record, I believe, will show that I—I just do not recall, but I know we were particularly interested in the one because we had the contract, and the other
41317 we did not have the contract, but a competitor—that is, the contract, as I understood it, was not closed, and the competitor was after a reduced rate, and I wrote to the interested railroads calling their attention to this request for reduction, which came to me through one of the railroads serving our plant.

Q. Are you talking about the 1929 instance now?

A. I am pretty sure it is 1929.

Q. Did you get the reduction asked for?

A. The reduction was not granted because it was not granted to the applicant, and, naturally, it was not granted to us, the applicant being another competing cement mill.

Q. Was that application for a reduction only for the—or as between two points or to one destination?

A. I am pretty sure it was, Mr. Wooden, and naturally it would affect any intermediate point just temporarily, during the life of the job.

Q. Then you had a 1930 application in Wisconsin; is that right?

A. If I so testified in my direct examination.

Q. Don't you remember it now? Where was this 1929 application? Where was the contract involved there?

A. I think that was some place in eastern Pennsylvania, both the 1927 and 1929 applications involved shipments in eastern Pennsylvania.

Q. Was the application in Wisconsin for reduc-
41318 tion to some particular destination on account of a large contract, or what was it?

A. I would like to look at—is there an exhibit on that, or did I just make a statement to that effect?

41319 Q. Showing you Respondents' Exhibits, for identification, 3233 and 3234, refreshing your recollection with those documents, can you answer my question?

A. These letters, Mr. Wooden, simply refer to business that the railroads had lost and not any specific job.

Q. Well, were your applications for reduced short-haul rates in 1929 and 1930 both on account of trucking?

A. I did not make any application in 1930.

Q. Well, was the application you made in 1929 on account of trucking?

A. In this way, that the contractor who had the job had arranged or negotiated with a contractor-hauler to haul his sand and gravel, and he was also negotiating with him to haul his cement, and that was the competition that I mentioned to the Western Maryland Railroad, that they would have to meet. It seemed their rail rate was somewhat higher than the rate the contract carrier agreed that he would haul the cement for for the job.

Q. So I understand that these three things that you did in 1927 and 1929 and 1930 with reference to reductions in short-haul rates were all on account of trucking?

A. There was no "thing" that I recall. I am using the word "thing" just to connect up your question. Now,

41320 there was nothing in 1930, Mr. Wooden, that I recall. These two letters you just showed me were simply letters from two different railroads, the substance of which were calling my attention to the dropping off of business in Wisconsin from their railroads, and they were wondering in one instance—I remember they were wondering how they could get it back, so that really there was only two applications that I testified about, one in 1927 and one in 1929 from York, York, Pa.

Q. That is why I use the word "things" because one of them was the application, things that you did as having testified, and this dropping off of the traffic in Wisconsin, the rail traffic, was that due to truck competition?

A. What time?

Q. 1930.

A. 1930, was it?

Q. Yes.

A. Well, I imagine that quite a bit of it was due to that, due to truck competition, Mr. Wooden.

Q. Did you testify that the Interstate Commerce Commission issued an order that resulted in a grouping of the Lehigh Valley mills?

A. For rate-making purposes, Mr. Wooden?

Q. Yes; for any purpose; grouping of the Lehigh Valley mills for any purpose.

41321 A. As I recall, the Interstate Commerce Commission in one of its decisions set a common rate from the entire Lehigh district—that is, using the average mileage, using the Northampton mileage as representing the average distance from all the mills, and thereby creating a common rate.

Q. Can you give me the citation to the order of the Interstate Commerce Commission on that?

A. I believe that in the Southern Cement case, and also—that is, either Docket 15805 or in the New England case, in Docket 18112, I. C. C. Docket.

Q. How sure are you of that?

41322 Q. I am showing you Respondents' Exhibit 3229, for identification, and ask you to refresh your recollection from it, if it does refresh your recollection, and tell us whether that is the decision and order of the Interstate Commerce Commission under which the original grouping of the Lehigh Valley mills was made?

A. This is not the original by any means.

Q. Not the original grouping?

A. No, sir.

41323 Q. All right. Do you mean to say that there was an order of the Interstate Commerce Commission under which the original grouping was established for rate-making purposes?

A. Yes. The Southern Cement case was two years prior to that, 18112.

Q. Can you cite the number of the Southern Case to which you refer?

A. It seems to me that number is Docket 15805.

Q. Did you ever hear, Mr. Cole, that the original grouping of the mills in the Lehigh Valley for rate making purposes was the result of informal conferences between the mills and the railroads rather than an order of the Interstate Commerce Commission?

41324 The Witness: So far as my memory serves me, the Interstate Commerce Commission grouped the mills for rate-making purposes in the Lehigh district.

By Mr. Wooden:

41325 Q. In the first instance?

A. As far as I know.

Q. Do you know?

A. As far as I know, the Commission did that, Mr. Wooden.

Q. Well, how far do you know? Do you know that the Commission made that original grouping?

41326 A. I know that the Commission in the decision in the Southern Cement case, which was decided in 1927, grouped those mills, and that is as far as my memory goes; that is taking me back considerable years.

By Mr. Wooden:

Q. And was that the original grouping?

A. As far as I know, 1927.

Q. Well, you are testifying here as a traffic expert.

A. Yes, sir. Now, if you can show me where I am wrong, Mr. Wooden.

Trial Examiner Wooden: Well, answer the question.

A. Well, I have answered his question, Your Honor. I told him that that is as far back as I could remember of a decision of the Commission in grouping the mills in 1927.

Trial Examiner Norwood: Now, let him ask his next question.

By Mr. Wooden:

Q. I say, you are testifying here as a traffic ex-

41327 pert, and I want to know the extent of your expert knowledge on that score, how sure you are of your own testimony.

Mr. Withrow: Your Honor, I object to going any further into this line of testimony. I would like to point out the Supreme Court in the old cement case made a finding on this and decided that the I. C. C. had grouped mills in the Lehigh Valley for freight rate purposes and I object to the line.

Trial Examiner Norwood: He was testing the witness' knowledge on these matters. Are you—

Mr. Withrow: Well, it is a matter that was not covered on direct examination.

Trial Examiner Norwood: Are you giving him suggestions how to answer this?

Mr. Withrow: No, I am not.

Trial Examiner Norwood: I think your remark would be of value in answering that question.

Mr. Withrow: No, because the question was how far back does your knowledge go, and that is all it was. The witness has answered that question four times.

Trial Examiner Norwood: I will overrule the objection. Read the question.

(Question read.)

Trial Examiner Norwood: Did you complete your
41328 question?

The Witness: That is my own testimony on your question?

By Mr. Wooden:

Q. Yes.

A. As far as I can remember, Mr. Wooden, at this time, the decision of 1927 of the Interstate Commerce Commission as to the grouping of the Lehigh mills for rate-making purposes,—1927.

Q. And your knowledge does not go back to the original grouping?

A. Not at the moment it does not, Mr. Wooden.

Q. You do not know whether the railroads, without the order of the Interstate Commerce Commission, grouped them before that time, or not?

A. I do not recall for the moment, Mr. Wooden.

Q. Now, you testified, on page 40915, that your work in connection with short-haul rate reductions was not done under Mr. MacFarland's suggestion or supervision. Mr. MacFarland was aware of what you were doing, wasn't he?

A. No, sir; Mr. MacFarland is vice-president in charge of white cement, and our specialties. He has nothing to do with gray cement.

Q. And had nothing to do with gray cement at that time?

A. As far as I know, he did not.

41329 Q. And you mean to say that Mr. MacFarland, the vice-president in charge of sales—

A. Of white cement.

Q. Who was in charge of gray cement?

A. Mr. McCormack.

Q. What was Mr. McCormack's position?

A. Sales manager.

Q. And was not Mr. MacFarland vice-president in charge of sales?

A. Of the white department.

Q. Who was in charge over Mr. McCormack of the gray cement?

A. Mr. Maguire and Mr. John, the president; Mr. Maguire was the executive vice-president.

Q. Will you explain why, or offer any explanation why Mr. MacFarland, having to do only with white cement, should be chosen as president of The Cement Institute which deals most largely with gray cement?

Mr. Withrow: Your Honor, I object to the question. It is no—

Trial Examiner Norwood: Sustained.

By Mr. Wooden:

Q. Why do you say—what is the basis of your statement that Mr. MacFarland had no knowledge or was not aware of what your were doing on short-haul rate reductions?

A. Because I rarely saw Mr. MacFarland. I might have seen him around maybe once a month, around the office. That same condition exists today. I have not seen Mr. MacFarland in close to two months. 41330

Q. Do you literally mean that he had no knowledge?

A. Oh, I don't say that.

Q. You did say it.

Mr. Withrow: No, he did not.

Let the witness answer the question.

A. If I did, Mr. Wooden, I will qualify it in this way, that I have no control over the manner in which Mr. MacFarland might inquire here and there as to what is going on. He might have asked Mr. John, and Mr. John told him, but as far as my negotiations with the railroads, I never conferred with Mr. MacFarland.

Q. But you just suggest now that Mr. MacFarland might have learned what you were doing from Mr. John or someone else in your company.

Mr. Withrow: No. I object to this misstatement of the record.

A. No, I did not say that.

Q. What was your reference?

Let the Reporter read it.

Trial Examiner Norwood: Read the question.

(Question read.)

By Mr. Wooden:

41331 Q. What was your reference to Mr. John?

Mr. Withrow: Well, there is an objection.

Trial Examiner Norwood: The objection is overruled.

A. My previous answer is the best I can give you to that.

By Mr. Wooden:

Q. Pardon?

A. My previous answer, the answer before the last one.

Q. That is the one I was interested in.

A. Yes.

Mr. Wooden: Read the witness' statement with reference to Mr. John.

(Answer read.)

By Mr. Wooden:

Q. And yet you testified to two conversations that Mr. MacFarland had with you about the matter, haven't you?

A. Two conversations?

Q. Yes, one about the New York meeting of January 7, and another about a telephone conversation that came to Mr. MacFarland from Mr. Meyer, and then from Mr. MacFarland to you.

A. Yes. I recall Mr. MacFarland stating to me that either during my absence, or out to lunch, or out of the city, that a Mr. Meyer had called me. I also recall testifying— Are you paying attention?

Q. Yes. I am listening with one ear, two ears.

41332 A. I also recall that Mr. MacFarland dropped in my office or met me in the hall some place and told me that he had attended a meeting.

Q. Now, on page 40921 of the record you testified that you understood the railroads called the meeting that is referred to in Commission's Exhibit 1743-A, line 7 on that page, line 6. You were asked, do you know who called that meeting of January 7, 1932, and your answer, "I understand the railroads did."

What was the basis of your understanding?

A. I told you early in the day that I had heard from several railroad men that it had been called by the executive traffic committee of the railroads in New York to meet with some dealer representatives.

Q. During 1931 and 1932 your consignees on railroad shipments were paying the freight to the railroads and deducting it from the face of the invoice, weren't they?

Mr. Withrow: Your Honor, I object to going into a subject not gone into on direct examination at all as to who paid the freight at any time.

Trial Examiner Norwood: I think that we had it in connection with certain exhibits, certain invoices that were received?

Mr. Withrow: Well, the invoices on the face, which also happen to be 1935, were—

41333 Trial Examiner Norwood: Didn't this witness testify to something about who paid the freight, and about who put in the claims?

Mr. Wooden: Surely.

Mr. Withrow: No. He testified as to who put in the claims; that is not who paid the freight or for whose account it was paid.

Trial Examiner Norwood: I think we ought to give that statement the benefit of the doubt, if any.

The Witness: May I have the question, please?

Trial Examiner Norwood: Does Counsel recall the basis for this question?

Mr. Wooden: Oh, Your Honor, I am quite sure of the subject; of the traffic department's handling of cement shipments and the use of the freight rate books, and all that, were gone into by this witness.

Mr. Withrow: Yes, but what has that got to do with who prepays the freight? Suppose they did or did not use the Institute rate book; it does not show anything about it.

Mr. Wooden: You put in here an instance there in North Carolina where claims were filed by this company on behalf of the dealer when the freight was prepaid—is that right, Mr. Witness?

The Witness: Not when the freight was prepaid;
41334 when the car was diverted.

Trial Examiner Norwood: The objection is overruled.

Mr. Withrow: We will have to go into this subject on redirect.

Trial Examiner Norwood: Yes.

Mr. Wooden: It is only a question; something even you will have to admit was covered by the direct examination.

What is the question?

(Question read.)

A. I believe they were, Mr. Wooden. I never saw those invoices except when they come to me in the matter of a claim for damages.

By Mr. Wooden:

Q. Well, if your consignees were paying the freight to the railroad, and deducting it from the face of the invoice, how could there be any saving to the Medusa Company just because the amount of freight paid to the railroads by the consignee was reduced?

A. That is assuming that we would get this reduction that we went after?

Q. Yes.

A. There would, to my mind, from a traffic manager's viewpoint, there is a natural—there actually would be an actual saving in the shipping charges.

41335 Q. A saving to the consignee, wasn't it?

A. I do not know whether it would be a saving to him, or not.

Q. If he paid the freight whatever reduction in freight there was redounded to his benefit, didn't it, rather than Medusa's?

A. No, I would not say that.

Q. How could it be otherwise?

A. I do not know.

By Mr. Wooden:

Q. Were these proposed reductions in short haul
41336 rates, if they had been put into effect, would they have brought the railroad rates to as low or lower than the truck rates?

A. If I remember correctly, they would be—

By Mr. Wooden:

Q. What was the answer?

A. If I remember correctly, they would be lower than the truck rate.

Q. They would have been lower if adopted?

A. I am pretty sure they would, either lower or comparable.

Q. Can you tell me, Mr. Cole, whether the truck rates in Michigan between 1932 and 1937 were the same as rail rates?

Mr. Withrow: Your Honor, I object. The truck rates and the rail rates are both in evidence and they are the best evidence.

Trial Examiner Notwood: I think we had that this morning.

Mr. Withrow: And we have been over it.

Trial Examiner Norwood: The objection is sustained.

By Mr. Wooden:

Q. Is it your testimony that in the various States, including Ohio and Michigan, and Indiana and Wis-
41337 consin, that the truck rates within each of those States are all the same?

Mr. Withrow: I object, Your Honor, until the question is definite. The same as what? It seems to me it is much too indefinite for any testimony.

Mr. Wooden: Take each State separately.

Mr. Withrow: But the same as what? The same as rail rate, or truck rate, the same as other truck rates, or rates on other commodities? What?

Trial Examiner Norwood: Well, clarify the question.

By Mr. Wooden:

Q. Well, I mean, is it your testimony as to each of those States that the trucking rate for transporting cement are the same as between different truckers to the same destination?

A. I did not so testify, including all those States. I never mentioned the State of Indiana.

Q. All right. Take each State separately and tell us what your testimony is.

Trial Examiner Norwood: Are they uniform trucking rates in those States?

The Witness: They are uniform, Your Honor, in Wisconsin. They are not uniform in Ohio and they are not uniform in Michigan.

Trial Examiner Norwood: Well, how long have they been uniform in the States where they are uniform?

The Witness: They are uniform in the State of
41338 Wisconsin only as far as I know, and that has been since about 1937 or 1938.

Trial Examiner Norwood: How about the others?

The Witness: Now, in Michigan, they have not been uniform. They have never been uniform.

By Mr. Wooden:

Q. The same for Ohio?

A. I would so say for Ohio, too, Mr. Wooden; that is, since the act, the Motor Act was—

Q. What about Indiana?

A. I do not know anything about Indiana. We do not have any truckers in Indiana.

Q. How about Illinois? You have a mill there.

A. I do not know. We do not have any contract truckers in Illinois.

Q. Well, can you tell me whether the trucking rate by various truckers in Illinois are all alike, are all the same?

A. I could not tell you that, Mr. Wooden.

41343 Washington, D. C.,
Saturday, June 15, 1940.

41344 GEORGE W. COLE, thereupon resumed the stand and testified further as follows:

Cross-Examination (Resumed) by Mr. Wooden.

Q. Mr. Cole, you have a man in your organization, your company, by the name of B. T. Korey?

A. Yes, sir.

Q. What is he?

A. He has the title of chief clerk in the sales department in the Cleveland office.

Q. Did you ever have a man in your organization by the name of G. C. Wole?

41345 A. Not that I recall.

Q. Showing you Commission's Exhibit 2766, do you accept that letter as having been written to you under the name of G. C. Wole?

A. Yes, sir; I would, Mr. Wooden.

41346 Q. I am asking why you so wrote and how you reconcile it with your testimony that you were not interested in and had no knowledge about base prices.

Trial Examiner Norwood: Let us get the answer to the first question.

The Witness: Mr. Wooden's question concerns a letter I wrote, but the exhibit he hands me is a reply to my letter. I would like to see the letter I wrote.

Mr. Wooden: I would, too.

Trial Examiner Norwood: He is asking you about that letter. Did you write that letter?

The Witness: I did not write this letter, Your Honor.

Trial Examiner Norwood: Did you write a letter to which that was a reply asking for these prices as indicated there by that letter?

The Witness: It is hard for me to say whether I asked for prices, because this file 35 Pennsylvania, that appears in this reply to me, is our file on rates.

By Mr. Wooden:

Q. But didn't you ask Mr. Byrne, your district sales manager, or his office, to check and determine whether the base price established at West Penn plus the freight
41347 rate would govern the present prevailing price based on Universal?

Mr. Withrow: Your Honor, the letter is the best evidence.

Trial Examiner Norwood: Overruled.

By Mr. Wooden:

Q. I am asking you why you participated in such correspondence if, as you have testified numerous times on the witness stand, you had no connection with, or no knowledge of, and no interest in, base prices?

Mr. Withrow: Your Honor, I object: There is no proof on the record—

Trial Examiner Norwood: Sustained.

41348 Q. Didn't you write a letter to Mr. Byrne, or his division, as indicated by Commission's Exhibit 2766, in which you ask him, or his office, to check and determine whether the base established at West Penn, plus freight, would govern the present prevailing price based on Universal?

A. Mr. Byrne's letter, as I look at it here, indicates that I wrote the letter, but what I said in that letter I do not recall.

Q. Doesn't Mr. Byrne's statement of what you ask him to do recall it to you?

A. No, sir; not at this time it does not. As I previously stated, that file—

Trial Examiner Norwood: Well, do you deny writing such a letter?

The Witness: I know that I never wrote anything about prices, Your Honor.

Trial Examiner Norwood: Then, you deny writing that letter?

The Witness: About prices; yes, sir.

Mr. Wooden: I serve notice at this time on Counsel for Respondents to produce Mr. Cole's letter of August 4, 1930.

Mr. Withrow: Of course, it is impossible to produce Mr. Cole's letter, because no such letter exists, but I will produce a letter which I believe is the one referred to.

I will have it marked as a Respondents' exhibit, for identification.

(The document was marked for identification "Respondents' Exhibit 3357.")

Mr. Wooden: Is this offered in evidence?

Mr. Withrow: No, it is not offered. It is turned over for examination pursuant to your notice to produce.

By Mr. Wooden:

Q. Mr. Cole, I am showing you Respondents' Exhibit, for identification, marked 3357. Is that your letter?

A. That is the letter written by my assistant.

Q. By whom was it signed?

A. By my assistant.

Q. Signed in your name?

A. He signed my name; yes, sir.

Q. Is that the letter to which Commission's Exhibit 2766 refers?

A. Yes, sir; and it bears out my contention that 41350 file 35 was written only by—pertains to rates only.

Mr. Wooden: I move to strike the statement as not responsive to the question.

Mr. Withrow: Well, it is responsive to the question.

Trial Examiner Norwood: I will let it stand.

Mr. Wooden: It is premature.

I want the exhibit offered in evidence as a Respondents' exhibit, and if they do not care to offer it, I will offer it.

Mr. Withrow: I do not care to offer it.

Mr. Wooden: All right.

Give it a Commission number.

(The document previously marked "Respondents' Exhibit 3357," was re-marked, for identification, "Commission's Exhibit 3254.")

Mr. Wooden: I now offer the letter of August 4, 1930, produced by Counsel for Respondents as Commission's Exhibit 3254.

Trial Examiner Norwood: Any objection?

Mr. Withrow: I object to the letter as incompetent, irrelevant, and immaterial, not bearing upon any of the issues raised by the complaint.

And I would like at this time; to move to strike from the record Commission's Exhibit 2766 on the basis
41351 of the testimony of the witness. It makes the letter appear to be irrelevant and immaterial to any issues. It does not tend to prove any conspiracy, any agreement with competitors whatsoever.

Mr. Wooden: I do not offer it for that purpose particularly.

Trial Examiner Norwood: Is this your signature to this, Mr. Cole?

The Witness: No, sir. It is Criswell who signed my name to that, Your Honor.

Examination on Voir Dire by Mr. Withrow.

Q. Mr. Cole, did you see that Commission's Exhibit 3254 at the time Mr. Criswell wrote it, or did you see it for the first time today?

41352 A. For the first time today.

Mr. Withrow: Now, I would like to re-press all the objections heretofore made, on that statement.

This procedure denies the Respondents the right to cross-examine the author of the document as to what he meant, and I object to it.

Trial Examiner Norwood: You say that that was prepared under your instruction, or under your supervision?

The Witness: No, sir. I did not know anything about the letter, Your Honor.

By Mr. Wooden:

Q. Well, do you question your assistant's authority to sign your name?

Mr. Withrow: I object to the question, whether this witness would question his authority. It is immaterial.

Trial Examiner Norwood: Overruled.

A. I do not question my assistant's authority to sign my name; no, sir.

Trial Examiner Norwood: I shall overrule the objec-

tion and receive the exhibit, and allow the Counsel's motion to strike the other exhibit.

3254 is received.

(COM. EX. 3254, was offered and received in evidence.)

41353 By Mr. Wooden:

Q. Now, I will ask you, Mr. Cole, why you have been testifying that you were not interested in base prices, and knew nothing about base prices, in view of this correspondence?

Q. I am talking about Commission's Exhibits 2765, 2766, and Commission's Exhibit 3254.

A. I had nothing to do with the writing of that letter; and, as I look at that letter, it is simply quoting some rates to the district office upon somebody's request.

Q. But didn't your assistant give a list of rates to which the price may be governed by one of the basing points?

A. I do not know anything about the basis of what would govern. I know the letter indicates that he wrote a letter, he checked out some rates, and sent it to the district office upon somebody's request.

Q. Is your testimony about having no knowledge
41354 of basing point prices intended to apply only to your individual personal matters or to the matters in your department, your traffic department?

A. I am testifying here in behalf of the Medusa Cement Company as a rate man.

Q. You intended your testimony to apply to your department in the company?

A. My testimony applies to my activities in behalf of the Medusa Cement Company.

Q. And to the activities of your traffic department?

A. On behalf of the Medusa Cement Company. The traffic department—the Medusa Cement Company acts as a unit.

By Mr. Wooden:

Q. Referring to Commission's Exhibit 3254, can you tell me whose pencil writing and figures are on that?

A. No. This seems to be put on some place, apparently in the Pittsburgh sales office. That appears to be pencil notations or pencil figures opposite the rates.

By Mr. Wooden:

41355 Q. You infer that from the fact that it was addressed to the Pittsburgh office,—the original?

A. Yes, sir; I would assume that, Mr. Wooden.

Q. You do not know in whose handwriting the word "Universal" is?

A. No, sir; I don't.

Q. Did that come back to you, to your Cleveland office—

A. This letter, sir?

Q. —with the pencil notations on it?

A. I wouldn't know that. This is the first time I have seen that letter.

Q. This morning?

A. When you showed it to me; yes, sir.

Q. You do not know who put the question mark on the letter in pencil under the words "West Winfield, Pa., base"?

A. No, sir.

Mr. Wooden: Might I inquire at this time, Mr. Withrow, which office of the Medusa Company that letter came from?

Mr. Withrow: I do not believe it came from any office.

Mr. Wooden: May I inquire where it did come from?

Mr. Withrow: I think it was stored at the Wampum mill. I am not sure. I did not personally get the letter. I have reason to believe that that is where it came from.

41356 By Mr. Wooden:

Q. Referring now, Mr. Cole, to your membership on the transportation committee of P.C.A., that committee handled that matter of the diversion stamp from a non-diversion stamp?

A. Not that I recall, Mr. Wooden.

Mr. Withrow: I move to strike the question and answer. There is no proof in the record that it did so handle it. I do not see why we should waste time putting in the record such questions.

Trial Examiner Norwood: Motion denied.

By Mr. Wooden:

Q. Did you attend this meeting of the committee on transportation that is referred to in Commission's Exhibit 749-2-V?

A. That letter seems to be dated May 18, 1935. At that

time I was in the Cleveland Clinic Hospital for about a month.

Q. My question is whether you attended the meeting that was referred to in the letter. It does not say when the meeting was held, whether on May 18 or some other day.

A. I infer from this letter that—The only meetings that I ever recall of the committee on transportation meetings have always been at the spring or fall meeting of the P.C.A. I never attended any meetings in connection with discussion on placing a notation on bills of lading to the effect that property belongs to the consignor and should not be reconsigned without proper order.

41357 Q. You mean to say you never discussed that use of such a stamp with any of the traffic managers of other cement companies.

A. I do not recall at this moment. I do know that I used that stamp, or at least I ordered the stamp after I had talked with several railroad officials in Cleveland. I do not remember talking with any traffic representatives of cement companies. Now, they might have asked me whether I am using it; I do not recall.

Q. Did you talk to any of them about using such a stamp before you began using it?

A. No, sir; not to my recollection.

Q. Did any one in your company talk to them about using it?

A. I wouldn't know that, Mr. Wooden.

Q. Did you talk to other people in your company about using it before you began using it?

A. No, sir. The only man I talked to was the purchasing agent. I asked him what it would cost to have some stamps made up.

Q. So, as I understand it now, you talked to no one, or had no communication with anyone before you began using that stamp?—

Mr. Withrow: Your Honor—

Q. —outside of the railroads, that you told us about here?

A. That is correct; yes, sir.

Q. All right.

A. To the best of my recollection.

41358 Q. Did you notify your own sales department regarding the use of that stamp?

A. Well, that stamp was furnished me by my purchasing department. To the best of my recollection, I wrote a letter to either the district officers or the superintendent of the mills who had chagre of loading the cars and executing the bills of lading, telling him just how to use the stamp, and the purpose for it. Now, whether I included the sales department in there, I do not recall.

Q. Well, considering the use to which the stamp was to be put, and the purpose to be served, would you say that the sales department should have been notified?

A. That seems to be a matter of judgment. I perhaps might have sent the sales department a copy of it—the district sales office.

41359 Q. Do you have any knowledge, Mr. Cole, of an understanding that traffic managers would notify the sales department that this notation would be placed on bills of lading, meaning the diversion stamp?

A. No, sir; I know of no such understanding, Mr. Wooden.

Q. You say that notwithstanding Commission's Exhibit 749-2-V, where Mr. Guy of the Universal says there was such an understanding?

Mr. Withrow: Your Honor, I object to this procedure. This document is not addressed to the witness, and not written by the witness.

Trial Examiner Norwood: Sustained.

That letter does not pertain to his company, does it?

Mr. Wooden: No. It is a communication between two competitors regarding the work of a meeting of the committee on transportation, of which this witness was a member.

The Witness: At one time.

By Mr. Wooden:

Q. You were a member in 1935, were you not?

41360 A. I do not recall if I was.

Q. Mr. Cole, has it been the practice of your traffic department to put this non-diversion stamp on all of the copies of the bills of lading, as well as the original?

A. The traffic department does not put that stamp on. It is done at the mill office under the supervision of

41361 the superintendent.

Q. Well, it is the practice of the Medusa Com-

pany to put that non-diversion stamp on all copies of the bills of lading?

A. As I recall, it is put on the original, it is put on the copy that is retained by the railroad agent; it is put on the copy that the superintendent keeps, and the copy that goes to the customer. That is all the copies of the bills of lading there are.

Q. Ar you testifying that it has been put on the copy that goes to the customer?

A. It is my understanding that it was; yes, sir.

Q. You do not know, do you, about it?

A. They were instructed to stamp the bill of lading, and a bill of lading in its complete form includes the copies that I mentioned.

Q. Did you give the instructions to stamp?

A. Yes, sir.

Q. Did you specifically include the instructions to stamp a copy that was sent to the customer?

A. That is not necessary, Mr. Wooden.

Q. How many claims would you say have been filed by Medusa against railroads for diverting cars subject to this non-diversion stamp?

A. I can recall one.

Q. Is that the one that is in evidence here?

41362 A. Yes, sir.

Q. Can you recall any others, Mr. Cole?

A. Not at the moment, Mr. Wooden.

Q. Your success in maintaining your claim against the railroad in that case received some publicity in the cement industry, did it?

A. I do not recall hearing about any publicity, Mr. Wooden.

By Mr. Wooden:

Q. You mean to say that you did not inform any of the representatives of other cement companies of your success in maintaining that claim?

A. Not that I recall. I treated that claim as just routine matter of the day, and when it was presented to the railroad it was, in my mind, a legitimate claim against the delivering line; nothing unusual about it.

Q. And yet it is the only one you remember of that particular kind?

A. At this moment; yes, sir.

Q. Have there been any cases where the status of the non-diversion stamp has been tested in litigation?

A. Not that I recall, Mr. Wooden.

Q. Either on the part of Medusa or anywhere
41363 in the industry, so far as you know?

A. No. I wouldn't know. I don't recall of any instance where a matter of that kind was taken to court.

Q. Is this non-diversion stamp put on the bills of lading before the railroad agent signs it?

A. Oh, yes.

41365 Q. You said your understanding of this situation we have been discussing was based on information, as I understood it, that you got from the American Association of Railways—or what was it?

A. It was the—you want to know the name of the association? It is the Association of American Railroads.

Q. Yes.

I am asking you if you got that understanding in connection with your consideration whether this stamp should be adopted.

A. No, sir.

Q. Where did you get it, and under what circumstances?

A. When I ordered those stamps I did not know what interpretation the railroads put on ownership of shipments of cement from any of our plants, Mr. Wooden.

Q. When was it that you got your understanding that you testified about?

A. It was some years later.

Q. How much later?

A. I would say, I think I knew about that some time in '38, '39.

Q. Do you mean to say that as a traffic expert you have been in the business of directing traffic of ce-
41366 ment up until 1938, for many years, and did not know that that was the usual and ordinary position of the railroad carriers regarding shipments made on—collect shipments?

A. I don't think I followed you correctly. I thought you wanted to know when I had definite advice from the Association of American Railroads.

Q. Yes, I did.

A. Well, now—

Q. That was incidental?

A. You are confusing me just a little bit, Mr. Wooden, and I would like to get this straightened out with you as to my understanding.

I believe on my direct testimony I stated as I read in the record a little while ago that the railroads—it was my understanding that the railroads considered a collect shipment as being the property of the consignee. It was based on the theory that it was shipped collect. Now, that was the theory of the railroads. That was their understanding as I had known it. Now—

Q. You had known it for many years?

Mr. Withrow: Let the witness finish.

A. I don't know whether I had known it for many years, but I do know this, Mr. Wooden, that I did receive advice that the Association of American Railroads apparently were a little bit in doubt as to the legality of it.

41367 Q. Of what?

A. The legality—their impression or their understanding about collect shipments, and they took it up with their legal department very recently. When I say "recently" I mean in the last two or three years. And the information I had is to the effect that their legal department had ruled that if a shipper wanted to put that sort of a notation on his bill of lading, he had a perfect right to do it.

Q. And when did you get that information?

A. I think I got that definite information very recently.

Q. You had no such information before you went to the trouble of ordering the stamp and begin to use it?

A. I had no such definite advice from the railroads that I just imparted to you, Mr. Wooden.

Q. Didn't you know, as a traffic man for many years prior to 1935, that the railroads considered collect shipments to be the property of the consignee after being delivered to the railroads?

A. Yes; I would say that my general understanding was that, Mr. Wooden.

Q. That was your understanding over the whole period

of your connection with the Medusa and Sandusky Company, wasn't it?

A. Well, I wouldn't say that.

Q. Over a very long period.

A. It was not a definite understanding; it was
41368 just a thought that perhaps had gone through my mind years ago, that I was under that impression, but, as I say, until recently I never had a definite expression from the railroads through their legal department.

Q. Did you know anything about the negotiations between the railroads and other cement company traffic managers on the very point that you were talking about before this diversion stamp was adopted?

Mr. Withrow: Your Honor, I object until there is some proof about such negotiations; and also I object because the question itself is indefinite in form.

Trial Examiner Norwood: I think he may ask him if he knows that that occurred.

Mr. Wooden: That is what I am asking him.

Trial Examiner Norwood: Do you know that that occurred?

The Witness: No, Your Honor, I know of no negotiations between traffic representatives of cement companies and the railroads.

By Mr. Wooden:

Q. How much did you know about the activities of the transportation committee of the P. C. A.?

A. Well, I knew that it met for about half an hour once or twice a year at the P. C. A. meetings.

Q. You do not know of anything that it did be-
41369 tween meetings by correspondence with members?

A. No, sir.

Q. Do you claim to know thoroughly everything that the transportation committee did?

A. No, sir; I don't.

Q. Would you say the question of the use of this non-diversion stamp involved any marketing problem?

A. I wouldn't know, Mr. Wooden.

41370 Q. Why, then, Mr. Cole, did you say on page 41115, at lines 8 to 10, inclusive, that there was no discussion of marketing problems at any committee meetings (showing record to witness)?

41371 A. Mr. Wooden, Your Honor, refers me to page 41415, lines 8 and 10. Now, line 8 says: "Was there any discussion at those committee meetings of sales or marketing conditions?"

My answer says: "No, sir."

By Mr. Wooden:

Q. Market conditions?

A. Or problems.

Q. Marketing problems?

A. Yes, sir. And I said: "No, sir."

Q. Did you attend all meetings of the committee?

A. No, sir.

Q. You do not know what the discussions were at the meetings you did not attend?

A. No, sir; I do not.

Q. You did not get the minutes of them?

A. There was never, as far as I recall—I do not recall receiving any minutes, Mr. Wooden.

41372 Q. Now Mr. Cole, do you recall this case, I believe in North Carolina, where you made a claim for damage resulting from diversion in violation of the non-diversion stamp?

A. Yes, sir; I recall filing a claim.

Q. As shown by Commission's Exhibits 546-K to Q, inclusive (showing documents to the witness)?

A. This seems to be—the document which you showed me, Mr. Wooden, seems to be papers pertaining to a claim that I filed on that particular shipment. It does not contain the claim papers itself.

Q. And that whole incident is also covered by Respondents' Exhibits 3334 to 3349, inclusive, is it not?

41373 A. Yes. These papers, Mr. Wooden, are part—that is, in connection with that diversion matter.

By Mr. Wooden:

Q. Now, the facts of that matter were that you made a shipment to one dealer, and he had it diverted to the town of another dealer, and the dealer in that town to which it was diverted put in a claim against you for the damage done on the shipment, didn't he?

A. Yes, sir. That is correct, Mr. Wooden.

Q. And the amount involved is $80?

A. Yes, sir; that is as I recall.

Q. You then allowed the dealer at the town to which the diversion was made that $80 claim, didn't you?

A. The accounting department, or the treasury, had allowed it; yes sir. All these papers reached me after the dealer had debited the company, and the company had issued a credit memorandum. Then it came to me, and I looked over all the papers, and I come to the conclusion that I had a proper claim against the de-
41374 livering line, and I filed the claim in the usual way, and I recall there was quite a bit of correspondence about it. They finally paid the claim.

Q. But you allowed the claim to the complaining dealer before you filed the claim with the railroad; is that right?

A. I did not allow it; the company did; yes sir.

Q. All right. And you found the railroad reluctant to allow the claim?

A. Well, the only reluctaney that I would attach to them,—that is, to their attitude, was that it seemed to be something new to them, and they were grouping around for some defense or argument not to pay the claim, and that developed into quite a lot of correspondence on the subject.

By Mr. Wooden:

Q. And didn't the railroad take the position that the consignee was within his right in making that claim?

41375 A. I have not thoroughly read over that file for some time, but that perhaps might have been one of his reasons why he did not want to pay it, Mr. Wooden. I will be glad to read any of those letters into the record if you want me to.

By Mr. Wooden:

Q. I want your own knowledge of the transaction. And didn't you tell the railroad in effect that unless they paid that claim to you, that you would withhold business from their line?

41376 By Mr. Wooden:

Q. So you got this claim allowed under those circumstances?

A. I think it was the persuasive powers of my letter writing in connection with that.

By Mr. Wooden:

Q. And in the persuasive letter writing you told the

railroad that you would withhold shipments from their lines unless they paid the claim?

Mr. Withrow: Same objection.

Trial Examiner Norwood: I think the letters will show that.

Mr. Wooden: If he had not said anything about the persuasive letters I would not have asked him.

Trial Examiner Norwood: Sustained.

By Mr. Wooden:

Q. Mr. Cole, at the time you were making this claim against the railroad for that diversion, were you aware of the provisions of section 10, subsection 3, of Title 49, entitled "Transportation in the U. S. Code," Chapter 1, of the Interstate Commerce Act?

41377 A. I do not know whether—at the time I had those negotiations—whether I had read section 10 of the bill of lading act.

Mr. Withrow: Could I ask Mr. Wooden was that record also section 10 of the Uniform Bill of Lading Act?

Mr. Wooden: No; Interstate Commerce.

The Witness: Was your question, Did I have that in mind?

By Mr. Wooden:

Q. Yes.

A. No, sir.

Mr. Wooden: Your Honor, Respondents' Counsel has asked that judicial notice be taken of a number of statements and rulings of the Interstate Commerce Commission. I ask Your Honor to take judicial notice of section 10, subsection (3), to which I referred.

41378 Mr. Wooden: When I referred to that subsection (3) of section 10 I had in mind the provisions which I now show you in a volume entitled "Interstate Commerce Acts Annotated, Volume 1, page 28."

Trial Examiner Norwood: Have that volume marked for identification.

(The document was marked for dentification "Commission's Exhibit 3255-A and 3255-B.")

Mr. Wooden: I also ask that judicial notice be taken of Section 3 of that same Chapter 1, entitled "Special Rates and Rebates Prohibited," and section 6, subsection (7), and section 6, subsection (11).

41379

Q. Mr. Cole, I understand that Respondents' Exhibit

3207-A to G is a list of railroad tariffs on file with the Medusa Company, isn't it (showing a document to the witness)?

A. Yes, sir.

Q. What use do you make of those railroad tariffs on file with the Medusa Company?

A. Well, we use them—in the first place, we maintain that file since starting in 1922, over 18 years, and we keep the file up currently; that is, on receipt of tariffs that have been re-issued or supplements thereto; they are filed in the proper place, and as to the use of the file, it has various uses which we put it to: We use it wherever we have any overcharge claims involving rates. We check and show the official tariff reference, the I. C. C. reference. We use it occasionally, or, frequently, rather, in checking any routes that might be changed, and we check the sup-
41380 plements against the original tariffs to keep the rates up currently in our records.

Those are the principal reasons, Mr. Wooden.

Q. Do you use them at all in making out bills of lading?

A. We do in this respect: As I stated on direct, we have these route books that we make up from these official railroad tariffs, and in the event we hear about a route maybe being closed or embargo, due to some heavy coal movement, or canceled, or a branch line discontinued, why, we naturally refer to the tariffs containing those routes.

Q. When you make out shipping papers, do you make any use of the tariffs on file?

A. We have six mills. Are you speaking of that as applying all over the—at all our plants?

Q. So far as your knowledge goes.

A. Well, I would say this, Mr. Wooden, that on shipments loaded at our Dixon plant, or Toledo plant at Silica, or Wampum plant, or York plant, or Manitowoc plant, the official tariffs are not referred to by the shipping departments of the Medusa Cement Company.

A. Now, I might make some exception there at Manitowoc. They do carry in their offices,—in addition to Institute books, they do carry this Western Trunk Line agency tariff, called at present Kipp Agency 132; but at all the rest of the plants they have our route book, which
41381 has been published by the traffic department of the Medusa Company, and they have their Institute rate books.

Now, as to Bay Bridge, most of the shipments that originate there, the orders come in through the Cleveland sales office, and the sales department send over or bring over these orders from time to time, and the rates are certified by the traffic department, as well as the route.

It frequently happens, though, that we have continuing shipments on some large contract, or some regular shipper. For instance, from Bay Bridge to Columbus, Bay Bridge to Cleveland, we might never see those sales orders. The sales department would simply put the rate on, that they would know, they know what the rate is, or they look up the rate in the Institute book and follow the routing.

Q. You do have to use your route book to get the routing?

A. Yes, sir.

Q. And your route book is made up from the railroad tariffs, is it?

A. Yes, sir; that is correct, Mr. Wooden.

Q. I understand you check the Institute freight rates with the tariffs, the railroad tariffs?

A. Yes, sir.

Q. Is that being done all the time?

A. Yes, sir.

Q. Is it done on each shipment?

41382 A. No, we don't do it on each shipment, Mr. Wooden.

Q. Do you do it on many shipments?

A. No, I wouldn't say we do it on many shipments. We make what we call periodical checks. We make it in this way: When we receive corrections from the Institute, which might show a change in ten stations, or it might show two stations, well, that is when we check the tariffs; that is, we check the railroad tariffs against that correction to see if the Institute has made the proper correction, whether it is an increase or a decrease, or elimination of a station, or changing from an open to a non-agency station. That is when we make these periodical changes.

Q. And those are the only circumstances under which you check the Institute book against the railroad tariffs?

A. Yes, I would say so. I would subscribe to that, Mr. Wooden—your statement.

Q. Do you check the Institute books against the railroad

tariffs applying to shipping points other than your own mill?

A. Applying to shipping points or from shipping points?

Q. From.

A. Well, now, we would do this: If we receive an Institute correction, and it showed changes from Universal, Pa., for instance, we would check the tariff against those corrections; yes, sir; just like we check our own shipping rates.

Q. But only at the time the changes are made—

41383 A. You understand—I would like to qualify that original statement of mine in this way, that when we receive the book itself, that is, before the supplements start coming in, we check that Institute book against this elaborate tariff file of ours, and, naturally, having checked it, we want to continue to check the supplements that come in to the Institute book against the current railroad tariffs.

Q. So that all rates in the Institute book had been checked by you at some time or other against the tariff; is that right?

A. I would say that at one time or another those rates have been checked by the traffic department; yes, sir.

Q. Well, is it, then, just because the Institute book is in a convenient form, in a condensed form, that you have found it useful as distinguished from the tariffs?

A. Well, I would say that the information contained there, being in alphabetical order, is in a convenient form, not only for my department but it is convenient for the average person, layman, that does not know anything about reading that freight tariff.

Q. With regard to route information, don't you think that the inclusion of route information in the Institute book would make it unduly bulky or confusing?

A. Well, His Honor, I think, early this week asked me that same question, and I told him it would be too voluminous.

Q. Wouldn't it tend to make it confusing, also?

41384 A. Well, it is all according to how you would have an index, or whether you would have an index. You apparently would have to have some sort of a cross-index to include routing in an Institute book. And, basing that on my observation of the routes that you generally find in railroad tariffs, they show a geographical list of

destinations in the tariffs I referred to, and then an alphabetical list, and then there are indexes, and in certain sections they carry routing, and it might be a little confusing to the average person.

Q. In other words, anybody but a traffic man would be likely to be confused by all the routing information; is that right?

A. There might be some exceptions, but I would say that the people that can read that rate book now will find it just—that is, I am speaking now of clerks and whoever might read it, outside of a traffic department employee—might find it a little difficult to handle it with the routing in the tariff—in the Institute book.

Q. Are those things you have just stated what you meant when you testified on page 40749 that it was not practicable to include the routings?

A. Yes, I would subscribe to that.

Q. Now, do I understand that when you file a claim against the railroad, that you base your claim only on the tariff?

A. If it is a rate, overcharging rate we base it only on the tariff authority; yes, sir.

41385 Q. Why don't you use the Institute rate book for that purpose?

A. Well, under the form—under the standard form of freight claim form that has been approved by the Interstate Commerce Commission, there is a provision in there that in connection with overcharge claim tariff authority for the claimed rate must be shown. When I say "must" I mean that there is a provision on the form itself for that information, and it has been our experience that if you do not show that information the claim is returned to you by the railroad asking your authority for the rate you claim.

Q. So the Institute book is not as useful for that purpose as the railroad tariff?

A. No; in so far as the citing of tariff authority, it is not, Mr. Wooden.

41386 Q. As a matter of fact, Mr. Cole, the usefulness of the Institute book to Medusa Company is not affected at all by the question of the legal status of the book before the I. C. C., is that right?

A. Would you mean that in connection with the nonuse of the book that we—when we file claims against the railroads?

By Mr. Wooden:

Q. Any use. I haven't any in mind in particular.

A. Well, if you will recall, Mr. Wooden, on my
41387 direct examination I stated that last year, for instance—

Trial Examiner Norwood: A little louder.

A. (Continuing) I stated that last year, for instance, we shipped approximately 17,000 carloads of cement, and we did not have to file an overcharge claim on any of those shipments, so that there was the whole year that we did not have to refer to the tariff, because we did not file a claim.

By Mr. Wooden:

Q. Wouldn't you say that the Institute freight rate book would be just as useful to Medusa for whatever purposes it is used, whether the use of it were lawful or unlawful?

A. It has always been my understanding that the Institute book was a lawful instrument.

Trial Examiner Norwood: Now, this witness testified that it was not recognized as an authority by the I. C. C., to that effect.

Did you not?

The Witness: Well, I said this, Your Honor, that when you file a claim against the railroad you must cite the tariff authority.

41388 Trial Examiner Norwood: And not cite the Institute book. Now, the Counsel asked you, notwithstanding that, the book still—

The Witness: I would like to answer in his way: The book, to me, is a valuable book—the Institute book.

By Mr. Wooden:

Q. Regardless of its status in law?

A. It is a valuable book for the uses which I described a little while ago.

41389 Q. Is it your testimony that cars weighing more than 50,000 pounds took no different rate than the 50,000-pound rate?

A. As I recall my direct testimony, I stated that in the territory the Medusa ships into—and I described that territory—the minimum weight has been 50,000 pounds for a long time.

By Mr. Wooden:

Q. Yes. My question was something different.

A. And I know of no instance in that territory where

there is a different minimum for a different sized car that might be used in the transportation of cement.

Q. My question is: As a traffic expert, is it your testimony that in the territory with which you are familiar, where Medusa did business, that cars weighing more than the minimum of 50,000 pounds took the same rate
41390 as the 50,000-pound minimum?

A. Well, I do not recall any distinction being made there as to minimum with respect to different rates in the territory we ship into.

Q. Then, is it your testimony that in that territory the rates in all sized cars from 50,000 pounds and up are the same?

A. The same what? Take the same rate?

Q. Take the same rate.

A. There is only one instance that I can recall right now where there might be an exception to that, Mr. Wooden, although there is no tonnage—there has not been any tonnage moved on that rate for years. I have in mind a rate that was put in years ago from Wampum, Pa., to a town called Conway, C-o-n-w-a-y, Pa., and that rate was slightly lower than the basic rate, because the application provided that special equipment would be used, and that it would cover bulk shipments of cement, and the minimum would be 80,000 pounds.

Q. That was a rate on an 80,000-pound car?

A. Just in that instance, which was to cover a job on the Ohio River. I think it is canceled by this time. It was put in temporarily, Mr. Wooden, as I recall.

Q. Well, is it your testimony that that is the only instance that you have known in your territory, the territory of the Medusa Company, where cars weighing more
41391 than 50,000 pounds carried a different rate, or higher rate, or lower rate, rather, than the 50,000-pound car?

A. That is the only one I can recall now.

Q. Aren't there some instances where railroads would permit the use of less than 50,000 pound cars?

A. On cement?

Q. Yes.

A. No, not that I recall.

Q. You testified from this document, did you not, Mr. Cole, with reference to the 50,000 pound minimum
41392 weight cars on cement?

A. Yes, sir.

Q. Why didn't you tell us about the exception that is contained on the title page there, the exception to the 50,000-pound requirement?

A. I will be glad to read that into the record.

Q. All right, do.

A. (Reading): "Minimum weight 50,000 pounds, except when for carrier's convenience cars of less capacity are furnished, in which case minimum weight will be the marked capacity of car furnished, but in no case less than 40,000 pounds, except on cement in bulk, minimum weight 50,000 pounds. For capacity of cars, see Official Railway Equipment Register, G. P. Conard's I. C. C.—R. E. R. No. 246 Pa., P. U. C.—R. E. R. No. 246 C. R. C.—R. E. R. No. 246, Supplements thereto or succesive issues thereof."

Q. When you testified that the minimum weights on cement had been 50,000 pounds for years you failed to take into account the exception that you have just read on that tariff. You had that before you. Why didn't you bring that out?

A. The reason I did not was there is no car—no freight car—now in service that is less than,—that we can use,—that would permit us to ship less than 50,000 pounds, and that exception there simply ties in to the minimum itself.

41393 It is a recognized minimum, Mr. Wooden. I had no reason to not read that exception. I have never known of a case, Mr. Wooden, where we have been permitted at any of our plants to ship less than 50,000 pounds at the commodity rates on cement.

Q. You have, you say, known 50,000 pound minimum to exist for years.

A. Yes, sir.

Q. How many years?

A. If I remember correctly, that minimum has been in effect since 1924.

Q. Do you say there were no 40,000 pound cars of cement shipped back as far as 1924?

A. I do not recall the Medusa Company ever being permitted to ship less than 50,000 pounds since 1924 up to date.

Q. Being permitted. Doesn't that exception from the tariff permit it?

A. No, sir. Not under my interpretation it does not.

Q. You mean 40,000-pound cars have been superseded by cars of larger capacity?

A. Well, I mean this, Mr. Wooden, that the old cars, the smaller cars, have been discontinued. The lowest minimum, that is, the lowest capacity car that is now used for cement loading today is 50,000 pounds, and they are very rare.

Q. Well, why do you talk about today rather than—

A. Well, I take you back on those cars 10 years.

Q. There has not been a 40,000-pound car used for 10 years?

41394 A. As far as the Medusa Cement Company is concerned; no, sir.

Q. You would not undertake to say whether other cement companies have used less than 50,000-pound cars?

A. I wouldn't know, Mr. Wooden; it seems to me that if they were to be permitted to use them we would be permitted.

Q. Do you say that with that exception that you read from the tariff, that the railroad company will not permit you to use less than a 50,000-pound car?

A. Yes, sir; and I suggest you do this, Mr. Wooden: At the lunch hour you go up to the Interstate Commerce Commission, and they will interpret that for you the same as I did, if their office is open.

Q. Now, you testified that you used the Institute rate books in billing. Does that mean billing customers?

A. The company uses the Institute book to get the information—that is, to verify the information that is contained in the shipping order that they receive from the mill after the car has been shipped.

Q. Well, is there some other kind of billing that goes on in your organization other than billing a customer?

A. No, I wouldn't say. I would say the billing or invoicing would be—would cover that—either billing or invoicing a customer.

Q. You would not consider making out bills of lading, freight papers, shipping papers, that that constituted billing?

41395 A. Making out a bill of lading is part of the transaction to be used as a medium to move a car from an origin point to destination. And billing, a railroad agent will bill a car, and the accounting department will bill the customer.

Q. The only billing that is done in the Medusa organization is billing the customer; is that right?

A. I would like to answer that in this way, that a car of cement moving from Bay Bridge, Ohio, to Cleveland, the bill of lading, including all the parts that I described on direct, and which you were looking at just a little while ago, are made out by the billing department in the mill office, or shipping department, whatever you want to call it. It is made out on a manifold machine, about seven or eight copies, and then the copy that the agent—or the copies that the agent must have must have the original to sign, and then he keeps a copy, and he signs three other copies. They are then received back in the mill office and forwarded to the Cleveland office. Upon receipt of those forms, one is passed on to the district office; one form is marked "For invoicing department" or "Accounting department." It is sent to the accounting department, and from that form the accounting department prepares an invoice and mails it to the customer.

Q. I merely want to know whether, when you testified about billing, you meant billing a customer or billing someone else.

Mr. Withrow: Whereabouts on the record did 41696 this appear, Mr. Wooden? I have been looking for it. I can't find it.

Trial Examiner Norwood: Well, I do not think we should stop for that to bring out this detail here.

Mr. Withrow: The witness testified as to what he does.

Trial Examiner Norwood: Yes. Go ahead.

The Witness: Is there a question pending? May I have the question read?

Trial Examiner Norwood: Read it.

(Question read.)

A. I do not recall where I used that word, but if you can point it out to me I will be glad to clarify it, Mr. Wooden.

By Mr. Wooden:

Q. On page 40756, lines 12 and 13, you were asked on direct whether Medusa uses the Institute rate books in billing, and you said "Yes, sir." I want to know what you meant by that.

A. By that I mean just as I described it. That billing I had in mind there was the billing done by the accounting department.

Q. To the customer?

A. Yes, sir.

Q. All right.

A. Yes, sir.

41398 Q. When you testified that the Institute rate books replaced the necessity for the prepara-
41399 tion of rate books similar to Respondents' Exhibit 3200-A to D, for identification, you meant that it replaced the necessity of the Medusa Company preparing the rates from its own mills?

A. Yes, I testified to that. I answered "Yes" to Mr. Withrow's question. I will answer "Yes" to yours, to be consistent there.

41400 Q. Well, the conversion table of the Sandusky Company that you were testifying about on page
40786 did not show or purport to show, did it, whether or not the amounts adjusted upward on the conversion table were the equivalent of the amounts adjusted downward?

A. The conversion table that I referred to on page 40786 did not show that information, but that conversion table was taken from a study made years and years ago which brought out the information that I state on line 1 on page 40787.

By Mr. Wooden:

Q. Well, the conversion table of the Sandusky
41401 Company was a table such as appears in some of the Institute freight rate books, wasn't it, converting hundredweight rates into per-barrel rates?

A. That was published before we had an Institute book, Mr. Wooden.

Q. But that was the character of the Sandusky conversion table?

A. It was made from a study, and that statement would be similar—I mean the conversion table would be similar to the one in the Institute rate book.

Q. Do I understand the Sandusky itself made that study?

A. The officials did; yes, sir; long before I came with the company.

Q. You do not know whether the study was made in connection with any collaboration with competitors, or not?

A. I have never heard that it was.

Q. You do not know about it.

A. I never heard that it was.

Q. Now, with regard to submitting claims to railroads

for overcharge, did you at one time have a provision on your quotation forms or on any of the forms used by your company to the effect that you were not responsible for any loss occurring in transit?

41402 The Witness: I do not recall right now, Your Honor, just the exact wording of that, but I will be glad to have a copy sent down here for the record.

By Mr. Wooden:

Q. Don't you recall of your own general knowledge whether or not you did carry such a provision to the effect that you were not responsible for loss or damage in transit?

A. I do not recall, Mr. Wooden.

41403 By Mr. Wooden:

Q. Can you say whether or not you have been filing claims on behalf of dealers for loss or damage in transit for many years?

A. I personally have not filed a loss or damage or overcharge claim for, I say, 10 years.

Q. Well, I am speaking about your department and not you personally. How far back does the practice of the Medusa Company in filing claims on behalf of the dealer for loss or damage in transit go?

A. So far as I can remember, we have never filed any claim on behalf of the dealer. We filed it in the name of the Sandusky Cement Company, and then later when the name was changed, the Medusa Portland Cement Company.

Q. But you did it on behalf of the dealer, didn't you?

A. No, sir; not to my knowledge we did not.

Q. You did it after the dealer reported to you the loss or damage, didn't you?

A. We had information perhaps from the customer that he had a damage, and he sent along a notated freight bill to that effect signed by the agent.

Q. He got credit for it, didn't he?

A. As I recall, in circumstances like that, he was given credit for it, and we filed the claim in the name of the Medusa Cement Company, collect the money, and keep it; that is, it is not passed on to any customer. It is filed in our behalf.

41404 Q. You made the allowance first and filed the claim afterwards?

A. Well, that is possible; yes, sir. The allowance was

made—when you have a bona fide case of damages you allow the customer whatever he was damaged.

Q. You mean to say that whenever a customer made a claim to you and put in the papers showing loss or damage in transit, that you then allowed the customer a credit for that before you took it up with the railroad?

A. In this way we did, Mr. Wooden: We would demand the receipt—I mean, we would demand the destination paid freight bill, and it would have to have on there a notation signed by the agent that there was a damage in transit to that shipment, and that would be furnished the traffic department. The accounting department would give us a memo showing the cost of that damage, the total amount, and they would issue a credit memorandum to the customer. We would file a claim in behalf of Medusa—

Q. After the customer had been allowed—

41405 Q. (Continuing)—the credit memorandum?

Trial Examiner Norwood: I think he told us that.

A. It might be on the same day.

Trial Examiner Norwood: He covered that. Go ahead.

By Mr. Wooden:

Q. Has your practice in that respect been the same over a long period of years?

A. Well, we have had instances where we would receive a letter from an agent or from a customer to the effect that he had been damaged, his cement had been damaged, but he had failed to secure a notation on the freight bill, and we would send—

Trial Examiner Norwood: Discuss that feature of it as briefly as you can.

The Witness: Only in the sense that I described it.

Trial Examiner Norwood: Yes.

The Witness: As to the damage notation.

By Mr. Wooden:

Q. Well, I mean, your practice in that respect, as you described it, has been the same for many years?

A. As I described it.

Q. How many years?

41406 A. I will say since 1922.

Q. Mr. Cole, showing you Respondents' Exhibit 3202-A to E, and 3203-A to D, what use do you make of those documents, or that kind of documents, in your department?

A. Docket—or, Exhibit, rather, R-3202-A is an Ohio rate book issued by the traffic department of the Sandusky Cement Company which was used in the traffic department to enable it at that time to place routing on shipping instructions—shipping documents.

Q. Had a similar routing list been used by the Medusa Company?

A. Yes, sir.

Q. Is the use of that routing list of any importance to the Medusa Company?

A. Yes, sir.

Q. In what way?

A. The importance of routing?

Q. Yes, sir.

A. Well, I recall on direct examination I gave several reasons why it was important to the Medusa Company: The matter of service to the customer by being in position to readily select routes that we, from experience, have previously checked with the schedules. It also placed us in position to know just how that shipment was going to move, by what junction; and it also placed us in position the following morning to be able to have one of our 41407 clerks record the tonnage that might move via the various lines that were indicated in that routing. And that was very valuable information to us in that we monthly would pass on to the railroads that we do business with the total number of cars; we gave them that as well as the inbound cars that they might have received a haul on.

And another important thing to us, Mr. Wooden, is that if for any reason a customer might phone us the following morning and say one of his men made a mistake; he should not have ordered that car, or he wanted paper instead of cloth, we from this information, together with the schedule we have, can tell almost the mile post where that car is at that time, and we can stop the car.

Q. Could your traffic department function efficiently without that information?

A. It would mean that we have to hire additional help to eliminate these books.

Q. At any rate, you would say that having those routing lists materially factilities the work of the traffic department; is that right?

A. Yes; together with the other information that we use in connection with those route books.

Q. But would you say that if you did not have the information in the form of the routing list that you would have to get the same information some other way?

41408 A. We would have to get the routing out of the railroad tariff; yes, sir.

Q. And you could not dispense with it?

A. Oh, it could be dispensed with. I imagine at one time when—I recall very distinctly, Mr. Wooden, that starting down in the months of 1932, when the business world was coming to an end—at least we all thought so at our mill—my force was substantially reduced. In fact, we were all worried about the situation.

Trial Examiner Norwood: Read the question.

Is that answered?

I will ask you to give a direct answer to these questions. We are taking more time than is necessary.

By Mr. Wooden:

Q. Mr. Cole, you testified, I believe, did you not, that rates in Ohio were the same between two given points regardless of routes.

A. I said substantially that; yes, sir; Mr. Wooden.

Q. Did you mean to state that they were the same by different routes at all cement mills; or just Medusa?

41409 A. I believe my testimony went to Medusa mills.

By Mr. Wooden:

Q. And do you know what the situation is, otherwise, not Medusa mills?

A. I never had occasion to check routes of our competitors. I was not interested in them.

By Mr. Wooden:

Q. When you testified about the one exception that is in evidence, about the routing at a junction point—do you remember that?

A. Yes, sir.

Q. You were speaking of that as an exception in the experience of the Medusa Company rather than an exception throughout the State of Ohio for all shippers.

A. Yes. That was an operating condition there that rarely arises.

Q. And did you mean to testify that in States other than Ohio there was the same rate between given points by different routes?

A. I did not so state, I don't believe, Mr. Wooden.

41410 Q. And you would not so state, would you?

A. Well, I would say this, based on my observation, that generally speaking there are various routes carrying the same rate between cement—from cement-producing points to points of destination in Central Freight Association and Trunk Line territory.

Q. Do you wish to say that there are not a substantial number of cases where the rates between given points by different routes are different?

A. You are trying to ask me if there are different rates for different routes; is that it?

Q. Yes.

A. And you say that in your territory there is a substantial number?

Q. I did not say anything about an opinion.

A. You said "Isn't it a fact, then, that there is a substantial number."

Q. Yes.

A. Well, I cannot subscribe to that theory of yours, Mr. Wooden, or your question, whatever you might want to call it. I understand that, based on my observation, there are very few exceptions to what I pointed out in Ohio.

Q. I show you Respondents' Exhibit 2385, which was put in evidence by the Huron Company, the traffic manager, and gives rates by different routes to one
41411 point, Canandaigua, N. Y., from Oswego and from Buffalo. Are you familiar with the rate shown there?

A. No, I am not. This is the first time I ever saw this. I would have to make a study of that. I would have to look at the routing, tariff, and rates, before I would be able to answer your question, Mr. Wooden.

Q. My question was whether you were familiar with it.

A. Not with that particular statement you showed me. That is the first time I ever saw it.

Q. Haven't you known in your experience as a traffic expert that rates between the same destinations by different routes of railroad are different?

A. Different routes are different?

Q. Rates are different.

A. You did not say that.

Q. It is obvious what I meant.

Mr. Withrow: I move that that be expunged from the record.

Trial Examiner Norwood: Motion denied.
Do you want the question read?
The Witness: No, sir.
A. I do not recall any such condition as you just described, Mr. Wooden.

By Mr. Wooden:

Q. Now, on the railroad tariffs in Ohio, those
41412 tariffs do not show all the rates by all the routes in Ohio, do they?

A. You are speaking about cement tariffs?

Q. Yes.

A. Every tariff that we have applying on cement moving from our Ohio plant either carries the route or gives reference to the route.

Q. Isn't it a fact that each particular tariff gives only the lowest rate between given points?

A. No, sir. That is not my understanding, Mr. Wooden. I have never heard of such an instance.

Q. Is it your testimony that each railroad tariff in Ohio shows the rates between various points by all the routes?

A. All the available routes.

Q. All right.

A. Yes, I would say so.

Q. You testified on direct about there being some instances where changes in railroad rates took effect on one-day notice.

A. Yes, sir.

Q. You remember that?

A. Yes, sir.

Q. That occurs only on special application, does it not?

A. Yes, sir.

Q. Special permission of the Interstate Commerce Commission?

A. You are correct, Mr. Wooden.

Q. How frequently have changes in cement rates
41413 been made effective on one-day notice?

A. Oh, there have been occasions where it has been frequent. There have been lapses, time intervened. The Interstate Commerce Commission will recognize any legitimate emergency when a railroad gives its reason why it is necessary to put on a rate on short notice, either one or seven or six days, something like that.

Q. Have you yet answered my question as to how frequently—

A. Yes, I have.

Trial Examiner Norwood: Is it very often done?

The Witness: I answered that, Your Honor. I said it is done frequently. Then there are lapses. Then they would have a substantial number of cases.

By Mr. Wooden:

Q. Can you give me any idea what you mean by "frequently"?

Mr. Withrow: Your Honor, I object to going into the subject. It is beyond the scope of the direct examination.

Trial Examiner Norwood: How many number of times can you recall?

The Witness: Well, I recall one instance when the Commission on very short notice—

Trial Examiner Norwood: I said how many times can you recall?

The Witness: Oh, offhand, I would say three or
41414 four times a year.

Mr. Withrow: Could I have a ruling on my objection?

Trial Examiner Norwood: The objection is overruled.

By Mr. Wooden:

Q. You mean to say that as a regular thing from year to year three or four times each year rail freight rates on cement have been changed on one day's notice?

A. In the past in some instances. Some years it has been more than that. Lately it might be one or two times a year, Mr. Wooden.

By Mr. Wooden:

Q. How far back would that two times a year go?

A. Several years.

Q. How many is several?

A. Oh, three or four years.

By Mr. Wooden:

41415 Q. In the instances where ~~rates~~ were changed on one-day notice, were they instances that involved intrastate rates or interstate rates?

A. It would be both State and interstate.

Now, you sort of refreshed my memory there, Mr. Wooden, and, as I recall now, there is on an average of eight or ten applications filed almost daily with the Commission, which would—

Q. I. C. C.?

A. With both the Interstate Commerce and the State Commissions all over the country—which would concern tariffs carrying cement rates. It might be filed, Mr. Wooden, by a railroad publishing agency who had made some errors, or wanted to correct a supplement, in that a shipper suggested filing it.

Q. Many of the applications for one-day notice of the effectiveness of the rate are turned down?

A. Yes, sir.

A. I don't know how many are turned down, but there are occasions where they are turned down, Mr. Wooden.

By Mr. Wooden:

Q. When you were talking about the one or two cases a year in the last several years, were you talking about applications or were you talking about actual changes
41416 that went into effect on one day's notice?

A. I was simply talking about the application itself, as far as I knew. Now, there might be many more.

Q. You were not talking about the cases where rate changes actually went into effect on one day's notice but where the application did; is that right?

A. It was the application itself, Mr. Wooden.

Q. Mr. Cole, I direct your attention to the testimony of a witness J. P. Simpson, appearing on page 9549
41417 of the record, beginning with line 18, and running through line 24. I will ask you to read it and state whether or not there is anything incorrect in that statement of the witness.

A. I do not subscribe to his statement there, the first part of it, that the minimum is 40,000 pounds.

By Mr. Wooden:

Q. What about the rest of it?

A. He says, "I find in many cases, if not all, the minimum weight is 50,000 pounds in a 36-foot car."

Q. Yes.

A. I never heard of such a thing, when you mention 50,000 pounds to be tied in with the length of a car.

41418 Q. You recognize that as a correction of Mr. Simpson's testimony about the 40,000 pounds and making it 50,000 pounds?

41419 A. Well, Mr. Simpson seems to agree with me in the latter part of this statement, where he says the minimum is 50,000 pounds.

By Mr. Wooden:

Q. All right.

A. The first part of it he says 40,100. On an-
41420 other page, he states: "I now amend the statement. It is 50,000 pounds."

Q. And you agree with his corrected statement?

A. Yes, I agree the minimum is 50,000 pounds.

Mr. Withrow: What about the 36-foot car provision?

The Witness: I never heard of it. I did not agree to that, Mr. Withrow. It is just the minimum 50,000 pounds.

By Mr. Wooden:

Q Do you disagree with that or you don't know what it means?

A. I know what it means, but I never heard of it used in connection with the 50,000 pounds.

Q. You say it is erroneous to make a reference to a 36-foot car in that connection?

A. Yes, sir; because you could use a 50-foot car and still have a 50,000-pound minimum.

Q. Now, I call your attention, Mr. Cole, to the testimony of Mr. Simpson appearing on page 9486 of the record beginning with line 22 and running through line 24. Do you agree or disagree with that testimony?

A. This reference to a question of: "Does every railroad station in the country keep all the tariffs in their offices, or do they just keep a very small part applicable to their own station?"

Q. That is right.

A. Mr. Simpson's answer is: "They keep vir-
41421 tually all tariffs naming rates from their stations to points in their territory, which probably embraces the bulk of the cement shippers."

And what was your question?

Q. Whether you agree or disagree with that statement.

A. Well, I think I testified on direct that the destination agent keeps very few tariffs naming rates from points of origin.

41426 Q. Let me ~~ask you this:~~ Do railroad station agents at various points keep on file tariffs naming rates from their station to other points?

A. From points of origin? When you say "from stations"—

Mr. Wooden: Read the question.

Trial Examiner Norwood: Read the question.

(Question read.)

A. Railroad agents keep on files tariffs naming rates from their station, but not to every station.

41427 Q. He did not say that they had tariffs naming rates for every station?

A. Some of the language in there just simply is not understandable to me. That is the reason I am giving you my version of this now.

41430 Q. I now call your attention, Mr. Cole, to the testimony of Mr. Simpson appearing on page 9503 of the record, beginning with line 11, and running to the bottom of the page, and I will ask you wherein, if at all, you disagree with that testimony?

A. I disagree, after reading this over, from line 18 down to 25; I absolutely disagree with him.

Q. Down to?

A. Starting in here where he says, "if."

Q. Even assuming the "if," you do not agree?

A. Why, no. I couldn't agree with him. Here, in his statement, he is trying to make somebody believe that, for instance, if a car moves down here from York, Pa., on the Pennsylvania, and "if"—see what it says, "if it is necessary to put it over on the B. & O. there would be additional switching charges," and that is entirely wrong.

Q. Well, you have pointed out, and no doubt correctly, that there is not any switching charge in that case; is that right?

A. I am not sure that there would be any switching charge, Mr. Wooden, in that particular case; yes, sir.

Q. Do you understand and do testify that there
41431 would be, in the case of Washington, a switching charge, but only with an "if," certain things existed, then there would be a switching charge?

A. I would like to answer this this way, Mr. Wooden: A car of cement would originate at York, Pa., and move direct over the Pennsylvania Railroad into Benning, which is in Washington, as I understand it, and then move over the B. & O. to a point on the B. & O. in Washington. Mr. Simpson's interpretation is that this would be a switching charge on the B. & O.; but it is not a switching charge.

By Mr. Wooden:

Q. Did Mr. Simpson testify anything about shipments from York, Pa.?

A. I don't know. I am just giving you an example of what that would be.

Q. Your testimony was about shipments from York, Pa., to Washington, D. C., was it not?

A. Yes.

Q. And you do not know whether Mr. Simpson said anything about shipments from York, Pa., to Washington, D. C.?

A. No. I was just answering my counsel's question.

41432 Q. Do you intend your testimony to apply to any route of shipment, except between York and Washington?

A. We are speaking of Washington now. My statement went to the effect that on shipments from our York plant, there would be no additional switching charge over the line haul rate.

Q. How about other points?

A. "Other points"? Where do you mean?

Q. Other shipping points to Washington.

A. Well, I have never had occasion to find an instance where there would be an additional switching charge here at Washington. If a car would move from the Lehigh Valley, there would be no additional switching charge.

Q. Are you prepared to say that there would be no switching charge from any cement shipping point to Washington?

A. No, I am not, Mr. Wooden—not at this time.

Q. You did not mean, then, to say that Mr. Simpson was wrong in so far as he suggested that there might be switching charges from some points to Washington, D. C.?

Q. Well, I disagree with the language that he used.

Q. Did you disagree with that, in substance?

A. I disagreed, and the reason I disagreed was because he said that there would be any switching charge, which indicated to me that he did not know about the situation in Washington.

Q. Does it not indicate to you also that he did not know that there was anything specific, but was giving a

41433 hypothetical illustration?

A. That might have been a hypothetical answer.

Mr. Withrow: I would like to point out at this time, Your Honor, that Mr. Simpson was not compelled to cite tariff authorities. As a matter of fact, Mr. Wooden must

well know that he would not have been able to cite tariff authorities in support of that statement. We have now spent 15 minutes—

Trial Examiner Norwood: You mean that you did not ask him on cross-examination to cite authorities? Is that what you mean?

Mr. Withrow: We asked him on cross-examination to cite the authorities, and he was not compelled to cite the authorities at all. Here is a hypothetical statement and it shows the difficulties that the Respondents have been under. Apparently, Mr. Wooden's contention now is that we should bring an expert in who can testify as to every single shipping point in the United States, in order to negative that testimony.

Trial Examiner Norwood: Has your expert been compelled to cite any authorities that he did not want to cite?

Mr. Withrow: He was asked to cite them by Your Honor, and we did cite them pursuant to Your Honor's request. That is what I mean.

41434 Trial Examiner Norwood: Had you requested me to ask Mr. Simpson to cite authorities?

Mr. Withrow: We asked him on cross-examination, and we argued it.

Trial Examiner Norwood: And it was refused?

Mr. Withrow: No—that his testimony should be eliminated.

Trial Examiner Norwood: Did I act any differently then than I am now?

Mr. Withrow: I was not inferring that Your Honor acted differently under any circumstances, but my purpose in making the statement is to show the difficulty that we encountered in attempting to meet the so-called expert testimony given by the Commission on this subject.

Trial Examiner Norwood: I do not understand your reference to requesting citations. I do not follow Counsel; that is all.

Go ahead.

By Mr. Wooden:

Q. Out of York, Pa., to Washington, you had two possible routes; that is, the originating carrier.

A. Three—four.

Q. And the B. & O. got a road haul out of it.

A. They would only get a road haul in some instances.

Q. To Washington.

41435 A. Yes.

Q. By a "road haul," does that mean that there is only one line involved from the shipping point to the destination?

A. A road haul, generally speaking, is the movement over one or two railroads, where those rail roads that receive revenue, a percentage or their division of the rate on that line-haul movement.

Q. Do you disagree with Mr. Simpson's testimony between line 11 and line 17 on page 9503?

A. That is correct. I would agree with that; yes.

Q. Mr. Simpson then testified that there were some instances where there would not be any switching charge, did he not?

A. In this case here he is speaking of a shipment moved in by two railroads, they both getting a line haul out of it.

Q. Yes.

A. No switching charge involved in that.

Q. You agree with him on that?

A. I agree with the statement you have just shown me there, Mr. Wooden.

Q. Do you agree with his statement beginning at line 23 and running to the end of the page, where he says if there was no switching charge, there would be a line-haul charge?

41436 A. I do not agree with this part of his statement, where he says if there are no switching charges there would be line haul charges. You see, you are placing me in this position here: I am reading excerpts from his testimony, and if I had sat here and listened to all of it, I might be able to agree with it or disagree with it, but this is a lot of hooey to me right now, the way that reads.

By Mr. Wooden:

Q. Do you disagree with this statement on lines 21 and 22, that if shipments were made into Washington over the Pennsylvania, for example, and delivery was made on the property by the B. & O., it would be necessary then to have to ascertain two facts; first, what are the switching charges, if any, of the B. & O.—

Mr. Withrow: Your Honor, I object. The witness is asked to testify to lines 18 to 25, and so testified, and then as to lines 24 and 25. Now, we have lines 21 through 23. I do not think that is correct. It is all in the record.

Trial Examiner Norwood: Objection overruled.

A. I would say if it was going to a private siding, it would not be necessary to find out what the switching
41437 charge on the B. & O. was, if the B. & O. was making that delivery.

By Mr. Wooden:

Q. In other words, it would not be necessary to find out if there were any switching rates?

A. Not under the circumstances that you have described to me. I don't know what Mr.—what's his name—Mr. Simpson's interpretation is, but I am answering you by giving you my interpretation.

Q. Do your claim that Mr. Simpson on that page was testifying about the conditions under which shipments were made from York, Pa., into Washington, D. C.?

A. I cannot answer that. I do not know what he is talking about, whether he is talking about Washington—he mentioned Washington, but—

By Mr. Wooden:

Q. As an example.

A. And he says that if it is necessary to bring a shipment into Washington—

Q. For example.

A. For example—

Q. To find out what the switching charges are, if necessary.

41438 A. He said it would be necessary. I say it is not necessary.

Q. To find out whether there are any switching charges?

A. That is right; yes.

Q. From York, Pa.?

A. That is right.

41441 *Redirect Examination by Mr. Withrow.*

Q. Mr. Cole, on cross-examination, once or twice you used the phrase "disrupting the scale." Will you tell us what you meant by that?

A. Well, by the word "disruption," I mean if there is a level of rates applying—a general level of rates applying in a certain area, and they are predicated on the same formula from each origin, that if a change is made from

one origin, it would disrupt that scale. That is what I had in mind, Mr. Withrow.

Q. Mr. Cole, I show you Commission's Exhibit 1644-A and B, and direct your attention to the first paragraph. Do you remember the map that is referred to in that paragraph, that we offered as a Respondents' exhibit (handing a document to the witness)?

A. Yes, sir.

Q. Tell us briefly what the zones on that map are intended to represent?

A. The zones there were intended to represent distances, 10 miles—scaled to 10 miles between each zone, to cover varied mileage, and to indicate to the chairman that these zones would cover rates from each producing point up to 50 miles, as suggested in my memorandum.

Q. Mr. Cole, would you tell us what difference per
41442 barrel there is on the trucking rate and the rail rate from Bay Bridge, Ohio, to Cleveland, Ohio?

Q. Make it July 1, 1937, Mr. Cole, if you recall?

A. The trucking rate is higher than the rail rate.

Q. By how much per barrel?

A. The last two years it has been—the last three years, it has been approximately 9 cents per barrel higher—the truck rate.

Q. Mr. Cole, I direct your attention to Commission's Exhibit 546-2-I and 2-J, the last sentence here, or the next to the last sentence in the fourth paragraph. Would you tell us whether or not you know of any arbitrary refusal to load trucks in Wisconsin?

A. I never heard of any, Mr. Withrow.

Q. Mr. Cole, I show you Respondents' Exhibit 3231-B and C, for identification, and ask you whether or not that is the instance of a short-haul rate application which you were referring to as having taken place in 1927 (handing document to the witness)?

A. Yes; I recall on my cross-examination, now that I have this exhibit before me—which I did not have on cross-
examination—that this 1927 matter was not an ap-
41443 plication of mine, but it was a matter that I had written to the Western Maryland about, because it concerned an application of a competitor at Hercules, Pa.

Q. Was the application granted, Mr. Cole?

A. No, sir.

Q. So that short haul was not reduced; is that correct?

A. That is correct, Mr. Withrow.

Q. Would you tell us whether or not in that instance the step which you took had anything to do with the trucking of cement?

A. No, sir; it did not.

Q. Mr. Cole, I show you Respondents' Exhibits 3359 and 3360, for identification, and ask you if that is the application in 1929 that you testified about on cross-examination?

A. Yes; and I would like at this time, now that I have this exhibit in front of me, to correct my testimony given on cross-examination, as to the facts of this transaction.

Q. Would you tell us the facts of the transaction and who applied for the lower rate?

A. The Western Maryland called on me in Cleveland, inquiring about this job, and I told them that we had
41444 the job, and the contractor was arranging to truck the cement. A short time after that I was advised by the Western Maryland that they, on their own behalf, had filed an application with the Trunk Line Association, asking for a reduction in the present rate. This rate was granted, and it was a temporary rate to apply only during the life of the job.

Q. Did you have anything to do with the application by the Western Maryland?

A. No; I did not have to support it, nor did I pay any attention to it, except for that call made over there. Then they notified me that the rate had been reduced.

Q. Mr. Cole, you testified about the New England
41445 cement rate decision of the Interstate Commerce Commission. I show you Respondents' Exhibit 3229. Is that the decision you had in mind (handing a document to the witness)?

A. Yes, sir.

Q. I direct your attention to page 607, the first paragraph beginning on that page. Will you tell us if that paragraph is the source of your information about the grouping by the Interstate Commerce Commission of the mills in the Lehigh Valley?

A. Yes, sir.

Q. Mr. Cole, Mr. Wooden asked you this morning about any cases of stamping on the bills of lading. You said you

could not recall any. Do you recall any cases about such a stamp covering the shipments other than cement shippers?

A. Oh, yes.

41446 By Mr. Withrow:

Q. Mr. Cole, on cross-examination you testified that you checked the Institute rate books and their supplements as they came into your office. Do you recall that testimony?

A. Yes, Mr. Withrow.

Q. Now, would you tell us if you take any action, and, if so, what action on receiving information of a change in rates from a source other than The Cement Institute?

A. If we receive information of a change in rates that is from a tariff that we have on file, we immediately notify our sales department and the accounting department of such a change.

Q. Now, do you remember your testimony about this rate on 80,000 pounds?

A. Yes.

Q. For Conway.

A. Yes, sir; I do.

41447 Q. Was that for delivery at Conway?

A. No, sir; it was for movement by river. It was just a temporary rate—Government work on the Ohio River.

Q. So that rate would not have been applicable if you wanted to ship 80,000 pounds to a dealer in Conway?

A. No, sir; it was not. Trans-water rate, is what it was.

Q. Now, Mr. Cole, you testified that the dealer or contractor, on damage in transit, is given credit, and then you file a claim with the railroad. Have there been any instances where the railroads have not allowed your claim?

A. Yes, sir.

Q. In those instances do you then sue the dealer for the difference between what he paid you and the original full face of the invoice?

A. No, sir.

Trial Examiner Norwood: Why don't you do that?

The Witness: Well, I have always taken the position myself that, if I were asked to sit in judgment on a case of that kind, it is a matter of good will; it might be a matter of $5, and I would want to retain his—

Trial Examiner Norwood: It is a matter of policy; is that it?

The Witness: That is right; a policy matter.

41448 Q. Mr. Cole, would you tell us whether or not, in order to secure the lowest rate, you must insert both the low rate and the applicable route in the bill of lading?

A. No, sir; you do not have to do that, Mr. Withrow.

41452 Washington, D. C.,
Tuesday, June 18, 1940.

41456 Trial Examiner Norwood: I will study the record and make the ruling on that.

Now, regarding the motion appearing in the record on page 39468 to 39470, inclusive, to strike certain exhibits relating to the T.V.A. activities which pertain to costs, and so forth, and referring again on page 40684, by Mr. Wooden, and also referring to his previous motion on page 38847 and 38848, which is a long list of documents and took considerable time to check it, the motion is allowed so far as striking the following exhibits, where counsel seemed to be in agreement:

Commission's Exhibit 356 in toto.

Commission's Exhibit 562-10-E, 12-Z, line 13 to
41457 the bottom of the page, 13-A, 13-B, 13-C, lines 1 to 9, 13-D, beginning in line 13 with "Mr. Smith further stated," and ending with line 24; 13-E, 13-F, from the beginning of the second paragraph to include 15; 13-G, second paragraph; 13-K, 13-L, 13-M, 13-N, 13-O, 13-P, 13-Q, 13-R, 13-S, and 13-T.

In regard to Commission's Exhibit 354-A to D, and 355-A to D, the motion is denied with the restriction said exhibits and all other exhibits and testimony that in fact are contained therein may not be used to indicate what production costs are and whether or not prices mentioned in connection with cement were fair or reasonable with respect to costs, profits, or losses.

The motion is denied as to the remainder of the exhibits, and as to the testimony cited on page 39470.

Now, I think my statement with respect to the exhibits, Commission's Exhibits 354-A to D, and 355-A to D, and my statement appearing on page 38854, are sufficient to cover all of these, and it will not be necessary to make any

further motions and withdraw any of those exhibits, and as to the other motion to strike Commission's Exhibits 836, 571, and testimony on page 11887 and 11888, the papers that were given me for studying this motion were replaced, and for two days I did not have them, the coun-
sel had retained them, and I did not receive them
41458 again until late yesterday, and I took them home, but I want to study them a little further because I think I can make a clarifying statement there that will not leave any doubt about the matter.

EDWARD E. HARTLEY, recalled as a witness for the Respondents, being previously sworn, testified further as follows:

Direct Examination by Mr. Leisure.

41459 I am sales manager of the South Dakota State Cement Plant. I have held the position something over fifteen years; since March 1925. Prior to the time that I became manager of this plant, I had no experience in the cement business. The plant is owned and operated by the State of South Dakota. The South Dakota
41460 State Cement Commission. As sales manager, I report to the Cement Commission. They get written
41461 reports daily. I am in full and complete charge of sales. We compete with privately-owned companies in sections of the country in which we do business.

The witness identified Resp. Ex. 3361 as a paper representing the companies with which the South Dakota State Cement Plant competes.

(RESP. EX. 3361 was offered and received in evidence.)

The witness testified that the South Dakota State plant has a marked capacity of 2,000 barrels a day and
41462 said that it could produce a trifle over that.

Q. What is your practice in the territory in which you do business, as to whether or not you follow the advances of delivered prices made by your competitors?

A. Yes, sir; we do.

Q. Has your mill ever met advanced prices after picking up quotations from, say, only one company?

A. I do not think so.

Q. I am not quite clear as to your answer. You say you do not think so. What would you require in order to follow?

A. Oh, three or four.

Q. Why, Mr. Hartley? Why do you wait for three or four, or why do you wait for quotations from some other company before advancing your price?

A. By that, Mr. Leisure, do you mean our delivered price?

Q. Yes, sir.

A. We do not initiate changes. It is not our policy to initiate changes in delivered prices, and one change in the delivered price does not make the change, and after three or four, undoubtedly would, and we follow those three or four which in most cases is a majority of the active competition in any of our territory.

Q. Well, if I understand you then, just one com-
41463 pany alone does not set a new price?

A. That does not make a market; no, sir; not in our estimation.

By Mr. Leisure:

Q. Let me approach it this way: When a price goes up, you have told me that it takes more than one price before you will attempt to meet that; it takes three or four, I think you said.

A. Yes, sir.

Q. Is that correct?

A. That is correct.

Q. Now, I am trying to get: When the prices are reduced do the same conditions obtain; for instance, when a single price is reduced, have you met that price?

A. A single price would not necessarily change the general, and make a general price reduction. It might on some specific order, because we would not know whether it was a general reduction or special cut price from the published price.

Q. Well, why have you met a reduced price, Mr. Hartley?

A. It is quite necessary to hold our customers.

Q. Have you ever advanced your base?

41464 A. I do not know how to answer that question. We have not initiated an advance of our base. Our

base price has been advanced and has been reduced, but we never initiated any such advance or any such reduction.

Q. As I understand you, then, whatever may be the reason, you have at times advanced the base?

A. Yes, sir.

Q. Can you give me any figures on that? Are you certain that you advanced it?

A. I can give you an explanation.

Q. I wish you would, please.

A. For instance, our territory, our freight rate territory, extends east, and in South Dakota directly east of Rapid City approximately to Mitchell, S. D., east of that the lower freight rate is from Mason City, Iowa, and if some plant at Mason City, Iowa, reduced their price to some particular town, or all towns in that territory, we would meet that after getting three, or two or three or four, of three or four price advances or reductions, we would meet that and immediately advance our price or reduce our price in the territory controlled by our freights.

41465 The witness identified Resp. Ex. 3362 as a map of the United States showing the market territory of the South Dakota plant as well as the territory controlled by its freights. As far as the sales territory was concerned he can vouch for the accuracy of the map.

Examination by Trial Examiner Norwood.

The special area of sales territory was marked out under his direction in his office.

41466 (RESP. EX. 3362, was offered and received in evidence.)

Q. Now, you told us a moment ago, Mr. Hartley, that if there were three or four companies advancing prices, and you had such knowledge from quotations that you picked up, that you followed that quotation. Why did you follow other companies in advancing your prices?

A. Well, I suppose primarily because we wanted a better price for our product.

Q. Well, now, what, if any, factors would cause you to refrain from following advances in prices?

41467 A. I do not know of any. If the advance was too great, in my estimation—for instance, at the present

time our base is $1.80, and if our competition on the east would advance their price into our trade territory and not into our rate territory, using as illustrative 50 cents a barrel, making it $2.30 base, I question very much whether I would follow it or not. The price would be too high and out of all reason.

Trial Examiner Norwood: You mean it would discourage consumption, do you mean?

The Witness: I beg your pardon?

Trial Examiner Norwood: Do you think it would discourage consumption?

The Witness: No, not necessarily, but in our particular position there we would; on the present set-up we are making a fair margin of profit, and to add 50 cents a barrel to that would be robbing, in our particular case, some of our own stockholders, and I do not think it is right to rob people because you have an opportunity at times, or might have.

By Mr. Leisure:

Q. You told us about advancing your base. Have you ever reduced your mill base?

A. Yes, sir.

Q. Do you know when?

A. I could not mention dates.

41468 Q. Well, can you tell me why you did it?

A. Competition reduced theirs, and it was necessary to reduce ours to hold our trade.

Q. Are you free, Mr. Hartley, in your position there in this State-owned plant, to quote higher prices, if you desire to do so?

A. Yes, sir.

Q. And to reduce them if you desire to do so?

A. Yes, sir.

Q. And do you sell at delivered prices, Mr. Hartley?

A. Almost entirely.

Q. To the Federal Government?

A. We have sold both ways to the Federal Government.

Q. Do you make any sales to railroads?

A. Yes, sir.

Q. I think you have testified on this subject before. I just want to ask you, in considering your sales to the railroads, I think you stated that they were only f. o. b. mill

sales. I would ask you now whether that applies to the Federal Government.

A. F. o. b. mill?

Q. Yes.

A. Not in all cases. We have quoted the Federal Government both ways, and have sold both ways.

Q. And railroads?

41469 A. We never quote a delivered price on a railroad.

Q. That is, you quote an f. o. b. mill?

A. Yes, sir.

Q. In cars?

A. Yes, sir.

Q. To the railroads; is that right?

A. Yes, sir.

Q. To what railroads do you quote, Mr. Hartley?

A. The Chicago, St. Paul & Minneapolis; the Chicago, Milwaukee, St. Paul & Pacific; the Chicago & Northwestern, the Chicago, Burlington & Quincy, and Rapid City-Black Hills & Western.

Q. Recently, have you quoted them,—in recent years?

A. Yes; we quote generally quarterly quotations.

Q. You have been quoting them, as I understand you, f. o. b. cars?

A. Yes, sir.

Q. How long have you quoted railroads that way?

A. I think ever since we have been in business.

Q. And just why do you do that?

A. They require it, and it is their own line, and they have their own system of taking care of freight, and it seems to be a general practice.

Q. In quoting them, where do you meet your competition?

A. We do not quote competition on that. We
41470 quote our mill base plus containers.

Q. And where there is competition selling at railroads, is that at the nearest point of the rails or is it at the destination?

A. I presume that would be the nearest point.

Q. The nearest point to their rails?

A. Yes.

Q. Why?

A. I do not know that I understood that previous question.

Q. Well, we were discussing your method of selling to the Federal Government and method of selling to the railroads.

A. Yes.

Q. I asked you what railroads you sold to.

A. Yes, sir.

Q. And where you still quoted to them in that fashion, and how long you had been doing it.

I am now asking, on sales to railroads, where is the point of competition you seek to meet? In other words, where do you find it?

A. In selling to railroads, quoting to railroads, we make no effort whatever to meet competition. We leave that to the railroad. We quote our mill price plus containers, and they use their own judgment about the placing of business.

Trial Examiner Norwood: That is your regular price, is it?

41471 The Witness: Yes, sir.

By Mr. Leisure:

Q. Now, you told us before, you told Mr. Wooden before, Mr. Hartley, that your mill is a base mill, I believe; is that correct?

A. So termed; yes, sir.

Q. And I would like to ask you now, at what destinations do your delivered prices equal your base figure, plus freight, from your mill?

A. Inside of the red lines on the map.

Q. And how long has that been so, if you know?

A. I could not tell you the exact time; probably 10 or 12 years.

Mr. Leisure: The witness indicated Respondents' Exhibit 3362, in referring to the lines on the map.

By Mr. Leisure:

Q. Now, Mr. Hartley, what has been your practice with respect to the prices you have quoted in the area where your base plus freight from your mill has not resulted in the lowest prices being quoted by your competitor?

41472 Q. If there is such territory, will you explain to us: Is there, Mr. Hartley? I simply skipped a question.

A. Yes, sir.

Q. Now, will you explain—Do you want the question read?

A. If you please.

Trial Examiner Norwood: Read it.

(Question read.)

A. We quote the lowest price quoted by our competitors.

By Mr. Leisure:

Q. Do you mean by that that you have met the prices announced by your competitors?

A. Yes, sir.

41473 Q. Why haven't you quoted a lower price, Mr. Hartley, instead of just meeting it?

A. Because, so far, we have never found that the quoted prices were too high, in our estimation, and we needed the revenue.

Q. And what has been your experience, if any, Mr. Hartley, as to whether or not when you did quote a lower price as to whether that was met by your competition?

The Witness: Will you please read that?

Q. Or if you haven't had actual experience in it, can you tell us from your experience in doing business what the situation is when a lower price is quoted in your section?

A. We meet the price.

Q. And you say you meet the price. How do you find what the prices are, Mr. Hartley?

A. We have salesmen out in the territory. The salesmen and our customers inform us as to what prices are being quoted.

41474 Q. I understand that these are quotations picked up in the field, Commission's Exhibits 2221 through 2225 (handing papers to the witness)?

Q. Do you get information in any other way than by quotations such as these, Mr. Hartley?

A. You mean these coming to my office?

Q. I think you said that you got the information by picking up quotations in the field.

A. Yes, sir.

Q. As to what the prices were?

A. Yes, sir.

Q. I am merely asking you if that is the only way in which you get information about the prices.

A. Well, we have our dealers, or our salesmen will telephone changes, and their information is based on quotations that they find in dealers' or contractors' offices.

41475 Q. And are your salesmen, or are they not, instructed to send in such quotations?

A. Yes, sir; they are instructed to send them in.

Q. How long does it take you to learn about a change?

A. Sometimes 30 minutes; sometimes as early as that, after the mail is out in the morning.

Trial Examiner Norwood: Well, does it sometimes take you longer?

The Witness: Well, you see, Judge, in the eastern part of our territory is on Central time, while the mill and office is located in Mountain time; and it would really be, in reality it would be an hour and thirty minutes, and as soon as a dealer will open his mail and discover a price change he is quite apt to call me.

By Mr. Leisure:

Q. Have any of your competitors ever notified you they were going to make a change before it was made?

A. No, sir.

Q. I have been asking you about your information generally without specifying time. I think I should ask you about the N. R. A.

Did you obtain any information about prices from any other source than the field during that period?

A. Yes, sir. I will probably be a little bit indefinite about that, but there was a rule in there that prices
41476 should be made five days in advance, and some clause in the rulings that they should be open prices.

Q. That is, you got the information from the Code Authority, the same as anybody else?

A. Yes, sir; and these other places as well.

Q. Will you look at these Commission's Exhibits 408 J and K. They purport to be tabulations containing prices filed in the State of Montana and Wyoming, Mr. Hartley. Those tabulations state that your plant filed prices at various destinations in those two States; is that correct?

A. Yes, sir.

Q. Can you tell us, Mr. Hartley, whether or not those prices, the prices referred to there in the tabulations, are prices which you filed initially, or were they prices which you met,—which were filed by your competitors,—do you know?

A. To the best of my knowledge, these were prices in effect at the time the tabulation was made and sent to the Code Authority.

Q. And can you tell us whether or not they were your current market prices for those towns at the time you filed them?

A. Yes, sir; they were.

Q. I would like also to call your attention to Commission's Exhibit 409-F, G, and H, and their tabulations of prices filed with the Code Authority for the States of Nebraska, North Dakota, and South Dakota.

41477 Now, it appears, Mr. Hartley, in those tabulations that at the destinations in those States the prices filed by your company were the same as prices filed by other manufacturers. Will you tell us whether or not your prices in those instances were filed under the same circumstances as the ones you have already told us about in Montana and Wyoming?

A. Yes, sir; the same.

Q. Will you tell us whether or not you adhered to the prices filed by you?

A. Yes, sir; we did.

Q. Now, you told us a moment ago you were perfectly free to raise your price if you wanted to. Did you feel free at the time during the Code that you could change any of the price filings whenever you chose to do so, if you filed your price first?

A. Yes, sir; we could change our price; either reduce or advance, under the rules set down by the Code Authority.

Q. Now, when you testified before you used the term to Mr. Wooden a time or two, "base price" and "base point." I would like to ask you what you mean by "basing point figure," so-called, or "base price"?

A. Can you explain that question?—

Trial Examiner Norwood: Read it.

A. —a little further? I do not know that I understand just what you want.

41478 Q. Well, it was a preliminary statement. I will just ask you a simple question:

What do you mean by basing-point figure, or so-called base price?

A. It is the price that we are supposed to be quoting and are quoting f. o. b. our mill for destination points plus containers, plus freight, making the destination delivered price.

Q. And in your experience have you ever heard of any cement ever being sold at stripped base figures?

A. No, sir.

Q. How do you know, and tell us whether you do or not, whether or not a given competitor's mill is a basing point?

Trial Examiner Norwood: He told us that before; he figured back to a basing point.

A. Take your delivered price and figure back your freight.

By Mr. Leisure:

Q. Is that it, Mr. Hartley?

A. Yes, sir.

Q. Since you have been in the business have you ever discovered that there is any fixed number of basing points?

A. No, sir.

Q. And do you keep any lists of competitors' basing points?

A. No, sir.

Q. Have you any practice of exchanging any fig-
41479 ures on basing points with competitors?

A. No, sir.

Q. Now, as to the basing points that you use in your regular business, do you keep any list of them?

A. We keep an informal list in the office for the information of the people interested there.

Q. Have you ever agreed with your competitors to quote a certain way, or heard them— Well, I will ask you that, first.

A. No, sir.

Q. Have you ever heard any of your competitors agree to quote in any particular way?

A. No, sir.

Q. What destinations, Mr. Hartley, in which you sell do your freight rate books cover?

41480 A. To all practical purposes, all of the territory in which we sell, and in some cases more; it extends out beyond any territory that we might make, in which we might make sales.

Trial Examiner Norwood: Well, do you keep the rates that your competitors have to pay to these same points?

The Witness: We have freight rate books, and we can readily figure; for instance, if we knew what a com-
41481 petitor's base was, we could readily figure what he would be apt, not necessarily, would quote.

Trial Examiner Norwood: Do you have the Institute books?

The Witness: We have them; yes, sir.

Trial Examiner Norwood: Do you use those for that purpose?

The Witness: No, sir; we have our own. We use the Institute books as a matter of reference, very largely, when used at all, or possibly to look up some point that our book does not have.

By Mr. Leisure:

Q. You told us when you were here before that you had your own books, Mr. Hartley. How long have you had those books?

A. Since 1925.

Q. What do you need this freight rate information for?

A. We need it in quoting prices, in making up delivered prices. We need it for use in our billing and in our invoicing. We need it for our bill of lading.

The witness identified Resp. Ex. 3363-A to 3363-Z-3 as a copy of one of the books which he had just been describing, covering only the State of South Dakota.

41483 Trial Examiner Norwood: Have you any routing information on this?

The Witness: No, sir. At least, I do not think so. No, I know there is not, on that.

Trial Examiner Norwood: How do you get that information?

The Witness: We have the freight tariffs which give the routings, and from that freight tariff our shipping clerk makes up a large chart, which he has under the glass on his desk, and he immediately refers.

(RESP. EX. 3363-A to 3363-Z-3, was offered and received in evidence.)

By Mr. Leisure:

Q. As to routing, Mr. Hartley, is it necessary for you to put routing information on your bills of lading?

A. The Western Trunk Line Committee in their tariffs request it. I do not think that it would be absolutely necessary; that is, I think a railroad would accept a bill of lading for shipment and put that in themselves, but we ordinarily route our own stuff.

41484 Q. Why do you do that?

A. So that we will know what the movement is going to be.

Q. And have you had any relationship with your customers with respect to that?

A. Oh, yes.

Q. And what, do you know, do they require?

A. Well, quite often where there are two railroads, they will request us to ship by a certain line, and then it is necessary, of course, for us to route our stuff, but after a few shipments have gone through our shipping clerk knows very largely who is on this line or the other line.

Q. Now, in computing your delivered prices, do you add fractions if half a cent, and drop fractions below?

A. You mean in the delivered price? No, sir. If it is under a half a cent, why, we drop it, and if it is over a half a cent, we add it.

Q. That is what I meant.

Trial Examiner Norwood: Suppose it is just a half.

The Witness: Beg your pardon?

Trial Examiner Norwood: Suppose it is an even half.

The Witness: I do not know. I do not remember of such incident happening. The chances are we would drop it because you will note that I said over the half.

By Mr. Leisure:

41485 Q. In order to have the record clear in the delivered prices, you drop it where it is—

A. Under a half cent, and add it when it is over a half.

Q. I do not know whether you answered me when I asked you why you did that, or not.

A. No, sir; I did not.

It is a matter of convenience in invoicing.

Trial Examiner Norwood: Well, that is just fractions on final computations, isn't it?

The Witness: Yes, sir. Well, it is prices per barrel, on the delivered price, which is the final per barrel.

Trial Examiner Norwood: Do you drop the per-barrel fraction?

The Witness: Yes, sir. For instance, if the quoted price was $2.75, we would not quote $2.754, or we would not quote $2.744 cents; we would give the $2.75, letting the half cent go as it would.

By Mr. Leisure:

Q. What is your mill net, as you used the term, when you testified before. You used the term "mill net." I would like to know what you consider is "mill net."

A. Stripped down price, freight containers discount stripped from the delivered price.

Q. The amount you receive?

A. Yes, sir; the amount we actually receive.

41486. Trial Examiner Norwood: That is the same as your base price; isn't it?

The Witness: Not necessarily.

By Mr. Leisure:

Q. When we recessed, I just asked you, Mr. Hartley, about what you considered was your mill net. Do you show your mill nets on invoices, or any other documents pertaining to each order?

A. Per barrel net, you mean?

Q. Yes.

A. No, sir.

Q. Do you keep a record of the net which you receive on each shipment?

A. No, sir.

Q. Do you keep any record of your average mill net?

A. Yes, sir.

Q. How?

A. We figure it every 30 days, every month, our average mill net.

41487 Q. Would you just look at that map again, Mr. Hartley, and tell us the destinations, if any, on which you receive a mill net as high as your mill base?

A. All points within the red circle on the map.

Trial Examiner Norwood: Does that mean that you have the same freight to all points inside of that?

The Witness: No, sir; but our freight rate is the lowest of any mill; that would give us the maximum net.

Trial Examiner Norwood: To the farthest point?

The Witness: To the farthest point inside the red line.

Trial Examiner Norwood: Then you get more than maximum net at a nearer point?

The Witness: Oh, no; oh, no. No, no. All inside; Rapid City is outside.

Trial Examiner Norwood: I see now. Thank you.

By Mr. Leisure:

Q. Can you tell us at what town to which you regularly ship you receive your lowest mill nets?

A. Probably Canton, S. D., would be the lowest; Sioux Falls would be one of the lowest.

Q. I wonder if you could tell us what that would be?

A. Under the present—

Q. What your lowest mill net.

A. I think it is $1.32.

41488 Trial Examiner Norwood: That is outside of the circle there.

The Witness: Yes, sir.

By Mr. Leisure:

Q. And to what large markets do you ship regularly at prices which yield low mill nets?

A. That would be the largest, and would be Watertown, and Yankton, S. D., Millbank.

Q. You mentioned Sioux Falls, didn't you?

A. Yes, sir; that is the largest market.

Q. Now, take those, Sioux Falls and Watertown and Yankton there on the map; what, if you know, are your nets on those shipments?

A. About $1.32.

Q. Could you tell us, Mr. Hartley, say, in 1934, 1937, what percentage of your total shipments were made to those three markets taken together?

A. I could not give you the actual figures; probably 20 percent, as near as I could estimate.

Q. Could you operate satisfactorily if you had to take these nets on all your shipments?

Q. At your present volume of business?

41489 A. We would get by. We would not lose money. It would not be particularly satisfactory. It would not net a satisfactory return on the investment in the plant.

By Mr. Leisure:

Q. Then why do you sell in those markets, Mr. Hartley, if it is unsatisfactory?

A. We need the volume.

Q. What?

A. We need the volume of the business to reduce costs.

Q. How far is your plant from the city limits of Rapid City?

A. Two miles.

Q. And could you give us any idea of what percentage

of your total sales in 1934-1937, let's say, were made in Rapid City?

41490 A. Under 10 percent.

By Mr. Leisure:

Q. And how much standard cement of other brands are sold in Rapid City?

A. To the best of my knowledge, none.

41493 Q. I call your attention to Commission's Exhibit 1339, and ask you if you received a copy of that in-
41494 vitation, and whether or not you bid on it, if you did?

A. Yes. I think we received the invitation, but we did not bid.

Q. Why not, Mr. Hartley?

A. This invitation covers a very wide territory. It gives no destinations except covered by State or parts of States, and as a matter of policy we do not like to ship our cement where we do not know the destination, or where it is to be used or for what purpose.

41495 Q. And why do you have that policy, Mr. Hartley?

A. In a great many instances, at least, as a protection to our dealers. There are a great many places in which cement might be used in the territory covered by this invitation, and undoubtedly a great many projects where the cement to our nation should be handled through a dealer instead of direct from a manufacturer to the Federal Government.

Q. Now, in coming to the conclusions which you say you came to, in deciding not to bid as you have testified, did you consult with any of your competitors or come to any understanding with them with regard to not bidding on this particular letting?

A. No, sir.

Q. During the years that you have been operating there, will you tell us to what extent, if any, you received reports that your competitors have secretly deviated from their published quotations?

41496 Q. Well, let me— In the regular course of business, will you tell us whether it would come to your knowledge that your competitors have or have not deviated from their published quotations?

A. It has come to my knowledge that from time to time they have done so.

Q. And that covers what period of time?

A. Very largely, and probably the entire time we have been in business.

By Mr. Leisure:

Q. Do you consider a general reduction a base price cut?

A. Technically; no, sir. It is a reduction in price.

Q. Now, when you told us these instances of price cutting have come to your attention, what, if anything, have you done in regard to them? Have you attempted to meet them?

A. My instructions to my salesmen and my practice is that we will meet any cut in any price made, but we will not offer the cut.

Q. Now, as to the polices of your company, Mr. Hartley, what do you have to do with that? What authority do you have with respect to formulating your marketing policy?

41497 A. Complete authority.

Q. I do not know whether I asked you how many members there were on the commission that runs your plant.

A. No, you did not. Four, and the governor.

Q. And you have complete authority as to the marketing policy; is that correct?

A. Yes, sir.

Q. Well, how did you go about determining your method of pricing and selling your product?

A. That would be when we first started operations; very largely through information given to me personally by the dealers that we would naturally contact in the course of business.

Q. And has there been any change in the South Dakota marketing practices or terms of sale since you have been with the plant?

A. Not of any consequence.

Q. You said when you were here before that dealers were your principal outlet, or some such language as that; I do not have it before me.

Under what circumstances did dealers become your most important customers?

41498 A. In our trade territory, in the territory that we serve, the dealers distribute a very large proportion of the cement that is used in that territory.

By Mr. Leisure:

Q. Do the dealers perform any services that are important to you?

A. Yes, sir.

41499 Q. Will you just tell us, Mr. Hartley, what services the dealers render in marketing your cement which makes them important to you?

A. There is the matter of credit; they distribute and sell small contractors, to people that we cannot reach, and, in fact, might be termed to be the salesmen for us, pushing our product.

Q. Could you render those services? Could your plant render the services which you have just been describing to us that dealers have been performing for you?

41500 A. Could we?

Q. Yes, sir.

A. It would be very expensive and a very hard thing to do in all cases. It involves a sale in less that carload lots in a great many cases, and in a great many cases it would be entirely impossible for us to do it.

Q. In your case who decides who is the dealer?

A. I do.

Q. Let me call your attention to a Commission exhibit here, 557, page 340, and ask you if the definition set forth there conforms to your ideas as to what properly constitutes the dealer; in your regular practice, I, of course, mean.

41502 A. That covers it.

Trial Examiner Norwood: Is that your idea of a dealer?

The Witness: Yes, sir.

Trial Examiner Norwood: Was it before that Code was adopted?

The Witness: In different little language, the same answer.

Trial Examiner Norwood: All right.

By Mr. Leisure:

Q. How long have you had a definite concept of what a building supply dealer is?

A. Yes, sir; I have.

Q. For how long?

A. Ever since we have been in business.

Q. Is it of any benefit to you in your business, Mr. Hartley, to have a definite concept of a dealer?

A. Yes, sir.

Q. Just explain it.

A. Quite necessary.

41503 Q. Why do you need it?

A. I will explain that as pertains to our own plant, of course. I know nothing about others.

We have a great many people who will come to us, write to us, and ask to buy cement direct, not going through any dealer. We have oil stations, gas stations, garages, and all such places that will try to buy cement direct from the mill, and it is necessary to have some sort of a standard as to what constitutes a dealer.

Q. Have you ever published to your trade a definition of what you consider to be a building supply dealer?

A. No, sir.

Q. Have you ever refused to sell to a customer because he was not a dealer?

A. Yes, sir. Oh, pardon me, not a customer, never refused to sell a customer because he was not a dealer, because we have never had a customer who was not a dealer outside of a few exceptions.

Q. Well, now, what were your reasons for refusing to sell this prospective customer?

41504 A. Primarily because he was not a dealer, his credit might or might not be good, and he would interfere undoubtedly with the business of our regularly established dealers.

Q. Now, going to another subject, Mr. Hartley: Does South Dakota have any farm cooperatives as customers of your plant?

A. By that you mean a cooperative elevator or a cooperative lumber company?

Q. That is exactly what I mean; yes, sir.

A. Yes, sir; a great many of them.

Q. And are any sold direct as dealers?

41505 A. Yes, sir.

Trial Examiner Norwood: How about the cooperative purchasing agency?

The Witness: Strictly a cooperative purchasing agency could not buy because they have not a yard or carry stock as a rule, in our territory.

By Mr. Leisure:

Q. Well, now, that being so, are there any such cooperatives not recognized as dealers?

A. Yes, sir.

Q. Do you sell direct to cooperatives you do not recognize as dealers?

A. No, sir.

Q. Do you have the same standard of what constitutes a dealer where cooperatives are concerned as you do when private buyers are involved?

A. Exactly the same standard.

Q. In these dealers, generally, that you have, do you have any information as to whether or not they belonged to dealer associations?

A. I know positively—

41506 A. I know positively that a great many of them do, and I know some that do not.

Q. Does it make the slightest difference to you whether or not they do or do not belong to associations in your selling to them?

A. Not at all.

Q. During the years that you have been selling cement, Mr. Hartley, have there been any changes in your practices with respect to classes of customers that you sell direct and the classes of customers that you sell through dealers?

A. Yes, sir; there has.

41507 Q. Have there been any changes in the kinds of work which you sell through dealers?

A. Yes, sir.

Q. What has been the trend, if you know, Mr. Hartley? Has the tendency been for you to sell more or less of your cement direct than you formerly did?

A. In our case probably more; in fact, more goes through contractors or to contractors direct than several years ago.

Q. Well, take the State of South Dakota, if it submits an invitation to you for the purchase of cement, how do you handle it?

A. Refer them to the dealer.

Q. I would like to call your attention to Commission's Exhibit 873-G, which purports to be a marketing policy of one of your competitors. Will you look at the first one there and tell us whether your policy is the same or different?

41508 Q. Do you see the one I mean, marked No. 1, Mr. Hartley?

A. Oh, I do not see the mark.

Q. Marked No. 1. It is printed No. 1.

A. Oh, yes.

Q. Can you tell us— I will just ask you a gen-
41509 eral question: Is that similar to your marketing policy or dissimilar, and if it is dissimilar, will you just point out where it is dissimilar?

A. That is not our policy.

Q. That is one of your competitors' policies.

A. Yes; but it is not the same as our policy. That is, at any rate, our present policy.

Do you want me to show the differences?

Trial Examiner Norwood: Yes.

By Mr. Leisure:

Q. Take the first one and tell us whether that is the same or dissimilar.

A. No. 1 says, shall sell direct to the United States Government and State Governments. There are certain projects in the United States Government that we sell direct, and always have, and State Governments we do not, and never have sold direct.

Q. What about the next one?

A. No. 2. We do not sell counties or parishes direct.

Q. And the next one?

A. No. 3. Yes, sir; we do.

Q. And the next one?

A. No. 4. We do not sell direct unless it happens to be handled by the Bureau of Reclamation, in which case we quote and possibly sell direct.

No. 5: We sell contractors under certain condi-
41510 tions on certain classes of work, highway paving outside of corporate limits of cities only.

No. 6. Concrete and cement products, we sell direct.

No. 7. We sell direct. I take it, it does not state the same words. Those are called ready-mix plants in our territory, and so termed. Those are sold direct. We call it mixing plants here. I presume it means the same thing.

Q. Now, this—those that you say you do not sell direct, do you or do you not sell them through dealers?

A. We make an effort to sell them through dealers.

Q. Can you tell us whether or not your salesmen, through their dealer-contractor contacts, keep you informed about the quantity of competitors' brands sold in your territory?

A. Yes, sir.

By Mr. Leisure:

Q. Do you or do you not examine the Bureau of Mines' reports of total shipments of cement into South Dakota?

A. Yes, sir; I do.

41511 Q. Take another subject, Mr. Hartley: Is there any difference between the price of cement in paper sacks as compared to the price in cloth sacks in your operation?

A. By that you mean the quoted price at destination?

Q. Yes.

A. Yes, sir.

Q. What is the difference?

A. Twenty-five cents a barrel.

Q. How long have you sold in paper sacks at that differential?

A. I think the differential has been the same since we have been in business. I am quite sure it has.

Q. Why do you have this difference—I mean, between paper and cloth?

41512 A. The cloth sacks are our sacks, and they are leased to the customer at 10 cents each, and returned to our plant, at which time the 10 cents per sack, usable sack, is returned to the customer. On paper sacks there is no return.

By Mr. Leisure:

Q. How much of your sales are in paper?

A. The last several years, between 65 and 66 percent paper.

By Mr. Leisure:

Q. Now, how did you arrive at this particular figure which you have used as the differential?

A. It was the figure used by competitors in their price circulars.

Q. Do you ever make any shipments of cement in bulk?

A. Yes, sir.

Q. And what is the difference on that?

A. Forty-five cents per barrel.

Q. Has it always been 45 cents per barrel?

A. I think not.

Q. What was it?

A. I think at one time it was 40 cents a barrel.

41513 Q. Why did you change?

A. Competitors changed their circular prices. We changed ours to conform.

Q. And how did you arrive at the first figure—I mean at 45 or whichever was first,—40?

A. The same way, through quotations by competition.

By Mr. Leisure:

Q. Do you feel free, Mr. Hartley, to change your differential for cement in paper sacks and from cement in bulk whichever you choose—I mean, you would be free to do that if you thought it was to the best advantage of your company?

A. Yes, sir.

Q. Do you give your customers any advance notice of price increase?

A. It has been so long since we put out a price circular I do not know as I could answer that honestly. I think five days—I think we give them five days.

By Mr. Leisure:

Q. When there have been cases of price increase which you described at the beginning of your testimony by your competitors, have you ever experienced any attitude
41514 or communication to you on the part of your competitors trying to get you to increase your price also?

A. No, sir.

Q. What is your practice with respect to the application of new reduced prices to shipments made just prior to the announcement of the reduction?

By Mr. Leisure:

Q. I mean by that, is effective the same date or a later date, or when is it effective?

A. The reduced price is retroactive five days.

By Mr. Leisure:

Q. But I was interested to know whether or not it became effective on the same date that your competitors' price did or some other date?

A. I do not think necessarily the same date at all, if I gave them 5 days' notice.

Trial Examiner Norwood: "Retroactive" dates from the time your price becomes effective; is that right?

The Witness: Yes, sir.

41515 Q. Do you prepay freight, Mr. Hartley, on your shipments?

Mr. MacIntyre: May we have the time fixed on this?

Mr. Leisure: Well, it should be up to—

Trial Examiner Norwood: July, 1937, did you prepay freight prior to that time?

The Witness: No, sir.

By Mr. Leisure:

Q. And what do you do at the present time?

Mr. MacIntyre: That is objected to as irrelevant and immaterial.

Trial Examiner Norwood: Sustained.

Mr. Leisure: The only reason I asked that now, Your Honor, is that it was gone into by Mr. Wooden with the witness on pages 12778-12780 subsequent to the complaint.

41517 Q. You told us before the noon recess, Mr. Hartley, that you ship cement in bulk. When you do ship it in bulk, how do you determine the weight for purposes of invoicing?

A. It is weighed at the nearest railroad scales—in our case, at Rapid City.

Q. And in invoicing the bulk carloads, do you or do you not consider your bulkheads or boards used to protect the cement as part of the tare weight of the cars?

41518 A. Not exactly. The tare weight of the car is considered, but the bulkheads or doors or boards are termed dunnage, and are deducted from the gross weight. The answer is just the same either way you term it.

By Mr. Leisure:

Q. How long has that been your practice?

A. Ever since we have been in business.

Q. What are your terms of discount, Mr. Hartley?

A. Ten cents a barrel, 15 days.

Q. Has that always been the same; I mean, were they your original terms of discount?

A. No, sir. The original terms were 10 cents 10 days.

Q. Why did you change, Mr. Hartley?

A. Our competitors changed, and we followed.

41519 Q. Will you just look at that exhibit? Previously, Mr. Hartley, you testified— at page 12755, Mr. MacIntyre—that your competitors adopted a trade discount in 1929. Will you look at that exhibit which I have just shown you, and tell us whether 1929 is the correct date, to the best of your knowledge?

A. From this, it would be August 17, 1926, and possibly I was in error.

Q. At that same time, when you were discussing it, you told us that you did not adopt the trade discount, and that on the face of your quotations your prices were 10 cents lower than your competitors. I would like to have you explain that statement, please.

A. Let me have that again.

(Mr. Leisure handed a document to the witness.)

A. I will explain it from this. Taking this as one that might be in our territory; it happens that it is up here in New Jersey, and this quotes a price in cloth sacks of $2.71, subject to discount of 10 cents per barrel; cash discount of 10 cents per barrel. Our quotation to this same town would have been $2.61, with a discount of 10 cents for cash,
41520 making the net discount $2.51 in both cases.

Q. Now, you told us this morning that your competition forced you to follow your competitors on terms and prices. Will you explain your reasons for not adopting the trade discount, then?

A. I studied that policy for several days, as I remember, and talked to a number of our more important dealers, who all agreed with my idea that it was not workable in our territory. It led to dissension and more or less trouble all the time, so we never adopted it.

41521 Q. Have there been any other changes in your terms of discount?

A. No.

Q. Why haven't you given any larger discount than that, Mr. Hartley?

A. I never considered that our net price was too high, and we needed that money, and it would have done no good in any case, so far as volume of business was concerned, because competition would have immediately met any special discount we might have put out as a regular quotation.

By Mr. Leisure:

Q. As I understand it, that being the case, you met their discount?

A. We met their discount.

41522 Q. Do you have any policy with respect to the diversion of cement in transit?

A. Yes, sir; a very decided one.

Q. Which is what?

A. We don't allow cars diverted, except with our consent.

Q. How long has that been your policy, Mr. Hartley?

A. Several years.

Q. How did you come to adopt that policy?

A. Competition adopted the policy, either that policy or a one very similar to it, and we had had more or less trouble through diversions unauthorized.

Q. You mean with your dealers?

A. With our dealers, and when the opportunity presented itself to put this into effect, we immediately did so.

Q. Do you ever stamp your bill of lading with a clause prohibiting diversion?

A. Yes, sir.

Q. Just tell us, briefly, under what circumstances you started that, if you did start it?

A. We used to stamp—when we put this policy into effect, we had a rubber stamp made, and when we ordered a new billing set, we had it printed on the bill of lading,
41523 and that is supposed to be put on the railroad way bill when it is billed by the railroad company to destination.

The witness identified Resp. Ex. 3365-A to J as one of the South Dakota State plant's billing sets. It shows the stamp as it was originally. It is the same way exactly, the same wording, as we have just now printed.

41524 (RESP. EX. 3365-A to 3365-J was offered and received in evidence.)

By Mr. Leisure:

Q. And do the railroads recognize this clause?

41525 A. Yes, sir.

Trial Examiner Norwood: How does the railroad recognize it? How do you know that the railroad recognizes that?

The Witness: When the railroad gets this bill of lading, they make a way bill for their own convenience, and this is incorporated in that way bill—on their way bill.

Trial Examiner Norwood: That is, as to non-diversion?

The Witness: Yes.

Trial Examiner Norwood: Go ahead.

41526 By Mr. Leisure:

Q. As to your specific job contracts, Mr. Hartley, do they prohibit diversions of cement in transit?

A. I think they do, without our consent.

Q. Is your position with regard to these diversions—I mean, the opposition to diversions—in any way the result of any attempt on your part to maintain your prices?

A. No, sir.

Q. Now, on another subject: Are you ever requested by any of your dealers to ship cement for their account to a destination in which they have no place of business?

A. Sometimes.

Q. And do you do it?

A. No, sir.

Q. Why not? Why don't you sell to a dealer at a point where he has no yard?

41527 A. If I may qualify my answer to the previous question, I would say that we never ship any dealer to a town where he has no yard, providing there is a dealer in that town. That is the way I should have answered. We do not allow any dealer to ship or divert cement into a town where he has no yard, providing there is another yard in that town.

Q. Now, I would like the answer to my other question, as to why you do not sell a dealer where he has no yard.

A. Oh, we must necessarily protect our dealer, so far as we can, and it might be that our dealer had overstepped his territory.

Q. Well, when you say "his territory," how do you determine the dealer's territory or market?

A. We do not as to per mile or anything of that kind, but we do as to towns in which he has yards.

Q. Can you tell us whether or not you announce your prices for cement by issuing circulars to your customers?

A. Yes, sir; we do.

By Mr. Leisure:

Q. Do you announce your prices in any other way?

A. At times; yes, sir—by telephone, sometimes by letter, or word or mouth through salesmen.

Q. To whom do you issue those circulars?

41528 A. To our dealers.

Q. And how often, when do you issue quotations?

A. No regular times.

Q. How did you happen to start issuing quotations in this way?

A. From information received from our dealers, we became conscious of the fact that it was the practice of cement companies to announce their prices by that method; so we started doing the same thing.

The witness identified Resp. Ex. 3366-A and B as a typical South Dakota State plant quotation.

41529 Mr. MacIntyre: That is objected to as irrelevant and immaterial.

Trial Examiner Norwood: Objection overruled. They will be received as marked.

(RESP. EX. 3366-A and 3366-B was offered and received in evidence.)

The witness identified Resp. Ex. 3367 as the South Dakota State plant's original contract form; Resp. Ex. 3368-A as a form adopted when the Code went into effect; 3368-B as a copy of the contract approved by the NRA Code. To the best of his knowledge, these were the only contract forms they used.

41530 (RESP. EXS. 3367 and 3368-A and 3368-B were offered and received in evidence.)

By Mr. Leisure:

Q. Did you have anything to do with the preparing of these?

A. I think I did.

Q. How did you determine originally what form of contract you would use and what terms you would include?

A. Oh, I had copies of several forms used by other companies.

Q. Do you or do you not reserve the right to select the route over which your shipments will travel?

A. We reserve the right to route.

Q. Why do you do that? What is the reason for that policy?

A. It might become necessary at some time to use a route other than that requested by the customer, for reasons that he might not know, and expedite the movement.

Q. Will you tell us whether or not you make your delivered prices subject to change in freight rates?

A. Yes, sir; we do.

41532 Trial Examiner Norwood: You meet the competition by meeting the price of competitors; is that what you mean?

Mr. Leisure: That is it exactly. In other words, when you are meeting your competitors' prices, does the freight rate have anything to do with it, and, if so, what?

The Witness: Oh, not necessarily. It does not necessarily change the price. If his quotation remains the same, irrespective of what the freight rate is, our price remains the same.

By Mr. Leisure:

Q. That is, regardless of what the printed contract may show on that?

A. If we had a written contract—and you have one there—for a volume, an undetermined amount, sold to a contractor at a stated price, and during the life of that contract and during the period of shipping, the freight rate should advance in that particular territory, we would not advance our price during the life of that contract.

Q. What is your practice, Mr. Hartley, regarding claims for loss or damage on cement shipped in cloth bags?

41533 A. Our practice is, if properly substantiated, on a loss, if the dealer will have the railroad agent properly mark a receipted freight bill showing the damage and loss, we will handle the claim to the railroad for the account of our customer.

By Mr. Leisure:

Q. Is that the same when shipped in paper?

A. Yes, sir.

Trial Examiner Norwood: Does that apply when some of the bags have been broken and the cement is spilled out?

The Witness: Yes, sir.

Trial Examiner Norwood: Do you cover that by shipping more cement and then putting in a claim?

The Witness: Well, we would allow—we would not make any allowance to our customer. We would require him to pay the invoice in full.

41534 Trial Examiner Norwood: Yes.

The Witness: And we put in our claim to his account, and when that claim is paid we would turn the claim check over to him.

By Mr. Leisure:

Q. Then, in the respects that you have been describing, as I understand your testimony, Mr. Hartley, in those instances the terms on the printed form are not controlling?

A. Not necessarily.

Q. Now, as to trucking, do you sell delivered to buyers' trucks at the mill?

A. Yes, sir; we sell for truck delivery.

By Mr. Leisure:

Q. How long has it been selling to trucks at your mill?

A. Ever since we have been in business.

Q. Approximately what percentage of your total ship-

ments have been made to buyers' trucks, let us say between 1925 and 1935?

A. Oh, less than 10 percent.

Q. How much less than 10 percent?

41535 A. I wouldn't know exactly, without figuring.

Q. Have you engaged or hired any truck for cement shipments?

A. No, sir.

Q. What has been your experience in loading trucks and loading cars? Which do you find the more expensive?

A. Loading trucks.

Q. What extra difficulty is there in loading trucks, if any?

A. Our carloading is very largely mechanical. As the cement leaves the bagging machine, it is fed on the belt to a point near the car, and on an elevation, and from the belt it goes onto a slide, and slides right down into the car, where the car loaders can put it on hand trucks and get it to the end of the car.

For truck delivery, it is necessary to take that cement from the belt at the bagging machine and convey it by hand trucks approximately a hundred feet, and at times when we want to get a little stock, which develops most of the time, we unload it up near the loading platform, and when the truck comes in we necessarily pick it up again, making an extra handling in both cases.

Q. Is there any variation in the size of the truck loads?

A. Oh, yes.

Q. How small do the truck loads run?

A. Oh, 20 bags.

Q. And for the small truckload, do you have to

41540 go through the same procedure, and is there any difference in the accounting processes, billing and invoicing?

A. Exactly the same as in the carloads.

Q. Have you ever charged anything extra for loading trucks at your mill?

A. Yes, sir.

Q. How long?

A. Always.

Q. How much?

A. At the present time, 25 cents a barrel.

Mr. MacIntyre: The last answer is objected to on the

special ground that it relates to events since the complaint, and I move that it be stricken out on that ground.

Trial Examiner Norwood: Motion allowed.

Tell us what happened prior to July 2, 1937.

By Mr. Leisure:

Q. What was your charge then, per barrel, Mr. Hartley?

A. I think the charge at that time was just the same.

Q. All right.

Trial Examiner Norwood: Just the same, how?

The Witness: Twenty-five cents differential.

By Mr. Leisure:

Q. As a result of your experience, are you in favor of truck loading, or not?

41537 A. I am not.

Q. Why do you continue to sell them at all?

A. It is an accommodation to our customers.

Q. What customers do you have reference to when you say "your customers"?

A. A great many of our customers, who are in small towns— a few in towns away from the railroad— and their sales are so very small it is impossible for them to move a carload of cement in any reasonable length of time. The consequence is that they buy in small quantities and move it faster.

Q. Mr. Hartley, will you sell to just any person who appears at the mill with a truck?

A. No, sir.

Q. What do you require?

A. A written order from a recognized dealer.

Q. How do you find your dealers on that question? You said you were opposed to trucking? How do you find your dealers?

Q. Generally speaking, I mean.

A. Generally speaking, they object to trucking.

Q. Have they given you any reasons?

A. Yes.

41538 Q. What are they?

A. Certain people are very much inclined to overstep their territories and peddle cement.

Q. Do you attempt to set your dealer's retail price?

A. No, sir.

Q. Mr. Hartley, what difference does it make to you if truckers do peddle cement at less than the dealer's price? What do you care about that?

A. I don't care to antagonize our dealers, but I don't think your previous question mentioned a lower price.

Trial Examiner Norwood: When they peddle it around in trucks, they do sell it at a lower price; do they?

The Witness: They could—no restrictions on them whatever.

By Mr. Leisure:

Q. You are speaking of selling it to consumers, not at manufacturer's price, as I understand it?

A. Oh, in selling it to the consumer.

Q. That is what I understand.

Trial Examiner Norwood: Well, do you understand that dealers—

The Witness: Well, it would necessarily be a dealer that would get the cement, but he might go out and undersell other dealers and cause commotion amongst our trade, which would reflect back on us.

41539 By Mr. Leisure:

Q. Have you ever had an agreement or understanding with your dealer or dealers' associations, or anyone, that you would deliver or would not deliver to trucks?

A. No, sir.

Q. Except as you have described?

A. That is right.

41544 By Mr. Leisure:

Q. Did you receive any other statistical services from the Institute? You told us before when you testified that you subscribed to certain services of The Cement Institute? Did you receive any other services, Mr. Hartley, other than The Cement Institute, any other statistical services?

A. Other than The Cement Institute?

Q. Yes.

A. None, except the Federal Bureau of Mines' reports.

Q. Was it the practice for anyone else to examine these reports besides yourself?

A. I do not think they ever did. They were available in our office.

Q. Did the 10th of the month report have any advantage to you over the report of the Bureau of Mines?

A. No, sir.

Q. Was it of any benefit to you, or what interest was it to you to have shipment figures of individual competitors?

A. No particular advantage.

Q. Would it give you any knowledge of the demand in a particular territory?

A. No, not necessarily so. I do not think it would make any difference as to that.

Q. Have these Institute statistics had any influence upon your production schedules?

A. No, sir.

Q. The record shows that you stopped sending shipping figures to The Cement Institute in 1936, Mr. Hartley. Why did you discontinue at that time?

A. From our point of view, the information was of no further value to us after the Code was out. There was no reason why we should continue to get the reports.

Q. Did you give special quantity discounts on large sales to the Federal Government, Mr. Hartley?

A. No, sir.

Q. Do you quote any lower price to large contractors than you do to customers who purchase only a carload at a time?

A. We never have; no, sir.

By Mr. Leisure:

Q. Now, the record shows that during the N.R.A. under Executive Order 676, bids 15 cents below filed prices were permitted to the Government. What was your position as to that?

A. Well, I do not remember whether we bid on anything during that period or not; I do not know.

Q. Did you have any agreement with anybody,—with any of your competitors,—that you would not avail yourself of the privilege given by this executive order?

A. No, sir.

Trial Examiner Norwood: Did you hear anybody say they would or they would not?

The Witness: No, sir.

By Mr. Leisure:

Q. There is another one of these Procurement bids here. You explained one of them this morning.

Did you bid on this one,—I am now referring to Commission's Exhibit 1341.

A. No, sir; we did not bid on that.

Q. Why not, Mr. Hartley?

A. It calls for sulphate-resistant cement and we do not make that.

41551 Q. I am now showing you Commission's Exhibit, for identification, 1381, being the Procurement invitation of May 12, 1938, and I was just asking you why you did not bid on that prior to the intermission.

A. For this reason, this calls for delivery in the State of California, and we have no freight rates, and the second reason it is modified cement, otherwise known as Bureau of Standards' specification SS-C-206, which we do not make.

Q. And the invitation represented by Commission's Exhibit 1386, for identification, being invitation of May 17, 1938, did you bid on it?

A. No, sir.

Q. And why not?

41552 A. That is in the State of Oregon. We have no freight rates in the State of Oregon, and it calls for sulphate-resistant cement, which we do not make.

Q. Also, I call your attention, Mr. Hartley, to Commission's Exhibit 1043, for identification, being the Procurement invitation of June 7, 1938. Did you bid on it?

A. No, sir.

Q. Why not?

A. It calls for delivery within the State of Wyoming, no destination shown, and we do not care to bid where no destinations are shown.

Q. Now, on this Commission's Exhibit 127 that shows that in May, 1934, you submitted a bid to the Bureau of Reclamation. Since your prices there are the same as some of your competitors, I want to ask you whether you had any communication with them before you submitted your bid or whether you came to any understanding or agreement with them with respect to that application?

A. No, we did not.

Q. As to that bid, you did not?

41553 A. No.

Q. Now, on this Code of Ethics, have you had occasion to look at that?

I do not want to take time for you to study it now. I just want to know if you are sufficiently familiar with it.

A. Why, I have read this, yes.

Q. You have?

A. Yes.

Q. Then, I would like to ask you whether or not it con-

tains any statement of fair practice which was not in accord with your own experience in the industry in 1930?

A. No, it does not.

Q. Now, as to these policies and practices that I have questioned you about while you were on the stand, I have made reference to all of these policies such as your selling in accordance with regard to your specific job contracts, and your methods of dealing with your dealers, your practices as to diversions, with regard to trucking, your differentials, the use of your rate books, the dropping of fractions, discounts, all of these practices without specifically naming them. Did you have any understanding or agreement with any of your competitors in arriving at them or in making use of them?

A. No, sir.

Mr. Leisure: That is all, Mr. Hartley.

Trial Examiner Norwood: Cross-examine.

41554 *Cross-Examination by Mr. MacIntyre.*

Q. Mr. Hartley, you have stated that you followed your competitors in respect to all these practices that Mr. Leisure has just enumerated; is that correct?

A. No, sir; I do not think I said that.

Q. Well, as to most of them?

A. No, I do not think I testified to that, Mr. MacIntyre. I think I testified that I followed their prices but not necessarily their methods, but it so happens that our methods in almost all cases are exactly the same.

Q. Well, in your adoption of the prices as well as the methods that you have adopted after you found that they used them, would it make any difference in your adoption of them as to whether or not that they had arrived at the use of them themselves through combination?

A. Inasmuch as I do not know anything about combination, that they might or might not have been entered into, it would not have made any difference to me if the method or policy was such that I thought it would be a good thing for us to have.

Q. Irrespective of whether it followed from a combination in restraint of trade; is that correct?

A. Well, I would not know that.

Q. Well, you adopted them irrespective of whether or not it did; is that correct?

41555 A. I do not think I ever adopted a policy that I considered was in restraint of trade,—not knowingly so, at least.

Q. Well, as to whether or not they did come out of restraint of trade, you did adopt the policies you had and about which you told Mr. Leisure?

A. I adopted those policies; yes, sir; irrespective of where they came from, that I do know.

Q. Whether they came from a combination in restraint of trade or not?

A. I do not know that.

Q. Mr. Hartley, Mr. Leisure showed you these Commission's Exhibits 1339, 1341, 1381, 1386, 1403. You told him with respect to some of those that one of your reasons for not bidding was because they called for delivery out in countries or in sections of the country where your freight rates would not let you reach, or something of the kind.

A. Yes, sir.

Q. With respect to Commission's Exhibit 1339, you said it was over such a wide territory,—do you recall your answer to that effect?

41556 A. I do not think I recall my exact answer.

Q. You said as to Commission's Exhibit 1339, one of the reasons you did not bid it called for delivery over such a wide territory, and as to some of the others you said it called for delivery in Oregon, Wyoming, and California; do you recall? And stated that as your reasons for not bidding,—do you recall?

A. I recall of answering the question.

Q. Can you point out to Mr. Hartley, in any one of those invitations any provision asking for you to submit a bid that would involve your delivery of cement at any place other than at your mill on cars? And for a price on cement on cars at your mill?

A. That is probably so, that we could have bid f. o. b. mill, but it would be wasting a whole lot of time and a whole lot of effort to bid where we knew positively in our own mind that there was no chance of shipping our cement from our mill to California, so it would be just a waste of time in us filling that out,—a waste of time for the Bureau in checking and tabulating.

Q. You would not have been involved in any shipment if you had given a price f. o. b. your mill.

A. No, but we would have been involved in the work

of making up the bid and in some cases there they ask for a bond.

Q. Now, referring to this Commission's Exhibit 1389, and a portion of it, that is the Code of Ethics of The Cement Institute. When did you first see that, Mr. Hartley?

41557

A. I could not give you the exact date. I think—

Q. Could you tell me where it was?

A. No, I cannot tell you where it was, no. I have read this.

Q. With whom were you at the time when you first saw it?

A. I do not know.

Q. In a meeting of members?

A. As I remember, it was quite a number of years ago, but I am not so sure but what I had a copy. Where I obtained that copy, I do not know.

Q. Some other cement manufacturer?

A. I might have gotten it in an N.R.A. meeting. No; I do not think I got it from any other manufacturer.

Q. Isn't it a fact you had a copy of that before June, 1933?

A. Possibly; possibly. I do not know that to be a fact, but it is possible.

Q. And you cannot tell us under what circumstances you secured it?

A. No. If I had it prior to that time I would not know, and I would not know afterwards. I just do not know, but I have seen it, and I think I had one possibly in our files somewhere now.

41558

Q. Now, Mr. Hartley, you told Mr. Leisure about your attending certain meetings of the members of The Cement Institute. Can you tell me the date of the first meeting you attended of the members of The Cement Institute?

A. No, I could not tell you the date. I am quite sure that it was held in the Blackstone Hotel in Chicago,—the first meeting I attended.

Q. You could not tell me the date?

A. I could not tell you the date.

Q. Did you ever attend a meeting of the board of trustees of The Cement Institute?

A. No, sir; not unless the board of trustees was the

general run of the cement manufacturers who attended those meetings, which I do not think it was.

Q. Did any committee of The Cement Institute ever submit to you a draft of a proposed code that had been formulated by the board of trustees of The Cement Institute for consideration with respect to the N.R.A.?

A. I think I saw such a draft.

Q. And was it submitted to you directly by the board of trustees, or did you see it after the other meetings of The Cement Institute saw it?

A. I don't know.

41559 Q. You don't know how much it had been discussed before you saw your company?

A. No, sir.

Q. And what kind of an agreement had been reached concerning it before you saw your company?

A. No.

Q. What was the date of the last meeting that you attended of The Cement Institute, Mr. Hartley?

A. I cannot tell you the dates, Mr. MacIntyre. It is a long time ago, and I have no record of them, and I could not tell you the date.

Q. Was it as late as 1936?

A. Probably. It might be that late. I just don't know. I attended several meetings during the time the Code was in effect.

Q. You and Mr. Leisure were discussing, on your direct examination, 1936 as the date on which you discontinued sending to The Cement Institute statistical information. Does that help you to recall?

A. It was prior to that time that I attended my last meeting.

Q. Did you have any other connection with The Cement Institute subsequent to 1936?

A. You mean after 1936?

Q. Yes.

41560 A. No.

Q. You did maintain connection with The Cement Institute up until 1936, as was evidenced by this discussion between you and Mr. Leisure on direct examination, concerning this statistics, and other matters?

A. I think that date is correct.

Q. When did you start receiving from The Cement Institute copies of its freight rate books?

A. Some time during the life of the Code, when the Code was in effect.

Q. You did not receive them prior to 1933?

A. I don't think so.

Q. And you are still receiving copies?

A. I get a copy, yes.

Q. For how many States?

A. Iowa, Nebraska, South Dakota, North Dakota, and Minnesota.

Q. What do you pay The Cement Institute for those?

A. I don't pay them anything.

Q. They just give them to you; is that right?

A. I don't know. They are sent to me. There is no charge; there is no bill accompanying them.

Q. No bill?

A. No.

Q. Do you make application for them?

A. No, sir. I made application—I will qualify that
41561 —I made application for the first ones that I asked them to send, and there have been correction books gotten out since involving freight rate changes, and those were sent without application.

Q. Did you pay for those first that you made application for?

A. As I remember it, they came in for the payment of services, and we paid The Cement Institute.

Q. And when you dropped out of The Cement Institute, nothing was said concerning your payment for The Cement Institute freight rate books?

A. They have sent copies since that date.

Q. Just gave them to you without a charge?

A. Well, they sent them to me, and I never paid for them.

Q. On this Good Friday invitation, which is Government's Exhibit 1339, you set forth your reasons why you did not submit a bid.

A. What is that,—the large one?

Q. Yes.

A. That covers western United States?

Q. Yes.

A. Yes, sir.

Q. Commission's Exhibit 1339.

Before you definitely decided not to submit a bid pursu-

ant to that invitation, had you discussed the matter with your commission on which the governor serves?

41562 A. I don't know—probably not.

Q. You just assumed—

A. If it so happens that there was a commission meeting about that time, I probably did. It was called to their attention. If the commission meeting was not held until that day, and the dates I don't remember, the chances are there was nothing said until after that date. Then, at the next commission meeting, it would be shown to them, and my action would be presented to them.

Q. You have no recollection of ever having discussed that matter with your commission prior to your decision not to submit a bid; is that correct?

A. I might and I might not.

Q. Well, I am asking you.

A. If they held a meeting from the time I received that—between the time I received that and the time that the order was to be sent in, I undoubtedly had some discussion with them about it, because it would be called to their attention.

Q. I am asking you what your present recollection is. Do you have any recollection?

A. I don't remember.

Q. Do you have any recollection that you did have such a discussion?

A. No; I can't remember that I did.

Q. Your only recollection now is that you as-

41563 sumed the full responsibility?

A. Yes, sir.

Q. For not bidding?

A. It is not necessary for me to assume it. I have it.

Q. Well, I know, but you exercised full responsibility?

A. Yes, sir.

Q. In not bidding?

A. Yes.

Q. I believe you told Mr. Leisure that you had been with the South Dakota plant since 1925.

A. Yes, sir.

Q. What was your experience previous to coming with the plant?

A. Just what do you mean, please? I just don't under-

stand what you mean by "experience"—experience in the cement business?

Q. You had not previously been employed by the Lehigh Company?

A. No, sir.

Q. You were not employed by any cement manufacturer?

A. No, sir.

Q. At any time prior to 1925?

A. No, sir.

Q. With dealers handling Lehigh cement?

A. Some of them are.

44564 Q. I say, were you affiliated with any dealers handling Lehigh cement prior to 1925?

A. In the capacity of cement salesmen, or something to that effect?

Q. No; employed by a jobber or dealer who had relationship with the Lehigh Company?

A. No, sir.

Q. What was your business prior to 1925, Mr. Hartley?

A. Wholesale coal.

By Mr. MacIntyre:

Q. During what period of time?

44565 A. Oh, ten or fifteen years, anyway.

Q. In the State of South Dakota?

A. At times; yes, sir—not all of that period at one particular place. Prior to going to South Dakota in the cement plant, I was stationed in Minneapolis.

Q. As a representative of a coal operator?

A. Yes, sir; coal operator and jobber.

Q. Is it your testimony, Mr. Hartley, that you never had any contact with the representatives of the cement manufacturers, even in your business as a representative of a coal operator, or otherwise, prior to the time that you became connected with the cement plant in South Dakota in 1925?

A. I don't believe I understand that question.

Mr. MacIntyre: Please read the question.

(Question read.)

A. I don't think I had any contact with them, no—not that I know of.

Q. You did not sell coal to the Lehigh Company?

A. No sir.

Q. How long prior to the date on which you were subpoenaed to appear here as a witness for the Respondents did representatives of the Respondents, or their attorneys, contact you, Mr. Hartley?

A. Two or three weeks.

Q. And where was that contact made?

41566 A. Rapid City, S. D.

Q. They visited your office?

A. Yes, sir.

Q. How long did they discuss the subject of your testimony here with you at that time?

41567 A. I think their representative was in Rapid City three days.

By Mr. MacIntyre:

Q. And have you continued those discussions of your probable testimony with them since you have been in Washington?

A. Yes.

Q. For how many days?

A. Two or three days.

Q. Now, you replied in response to a subpoena of the Federal Trade Commission did you not?

A. Yes, sir.

Q. In this case?

A. Yes.

Q. In connection with your appearance pursuant to that subpoena, did representatives of the Federal Trade Commission at the time you were subpoenaed, or about that time, or at any time before you appeared as a witness, make trips to South Dakota and sit down and discuss the subject of your testimony with you out there?

41568 A. No, sir.

By Mr. MacIntyre:

Q. Is it not a fact that when you appeared in Chicago as a Commission witness, no one representing the Commission saw you but for a few minutes before you took the stand? Is that correct?

A. That is true.

Q. On direct examination you told Mr. Leisure that it was not necessary for you to include in your bill of lading a statement of the routes on the cement that you shipped. Do you recall that?

A. As I recall my answer to that question, it was that the Western Trunk Line tariff, which governs freight rates on cement, calls for routing to be put on the bill of lading, and that I have no doubt in my mind, and probably at times the railroad would accept the bill of lading without specific routing. I think that is the substance of my answer.

41569 Q. It does not require that it go on there?

A. It is required by the tariff. The tariff does require it, I think.

Q. Is it your testimony that it is required by the tariff, or that the railroads, at times, request that it be done?

A. No; my understanding is that a routing is supposed to be put on by the tariff.

Q. That is, that it is required by the tariff?

A. I think that is true; yes, sir.

Q. How sure are you of that, Mr. Hartley?

A. I am sure that we use that as a practice in our business every day. If you get 133-G in the Western Trunk Line tariff, I can tell you in just a moment. I would not want to go on and say it is positively in there, but it has been at some early time, and we still follow the practice.

Q. Is it not a fact, Mr. Hartley, that you can tender a shipment and the railroads will accept it, and do accept it, without your specifying either the routing or the rate, and that they will fill in the lowest available rate between the points of shipment and destination?

A. I think they would accept it.

Q. Don't you know from your own experience that that is the case, that they do?

A. Not as far as rates are concerned, and not as far as the route is concerned, because we, as a practice,

41570 put in the routing and put in the rate. Now, there might be special times when our bill clerk would neglect to do that, but not as a practice.

Q. And the railroads fill in the lowest rate?

A. Yes.

Q. When you do not put it in?

A. And we approve that. It might often—or not often, but occasionally will happen that we will get on our bill of lading the wrong rate and the railroad office will call us up and check that rate.

Q. Informing you of what the lowest available rate is between those points?

A. Asking us to check the rate and see whether if we made a mistake or they made a mistake, and when we don't agree on which one made the mistake, then they will ask for our authority.

Q. Have you told Mr. Leisure that you use these Respondents' Exhibits 3363-A to Z-3 for the purpose of quoting prices?

A. Yes, sir. This is an old copy, but that is exactly the same. This is prior to the last two advances, but the form is identical.

Q. Could you use the information contained therein under the names of basing points, such as Mason City, Sugar Creek, Steelton, Louisville, and Lin.—for Linwood; is that it?

A. Yes, sir.

41571 Q. For any purpose other than pricing?

A. Well, yes, we can use this book for naming the rate that goes on the bill of lading.

Q. Do you ship from those points?

A. Ship from those points?

Q. Yes.

A. No; but Rapid City is also on here.

Q. I know, but from the points that I named, how could you use the information appearing on these columns for any purpose other than prices?

A. I don't know. I don't know of any other way.

Q. You would not have any use for it in shipping, would you?

A. No; there is no routing or anything of that kind in those.

Q. Well, you could not use that information; if you had the routing, you could not use the information now against any of those basing points for shipping?

A. No.

Q. Because you made no shipments from those points?

A. No.

Q. And, by the same token, you cannot use the information from basing points in the same Institute book that you have, can you?

Trial Examiner Norwood: Do you mean except for prices?

41572 Mr. MacIntyre: Except for prices; yes.

A. Well, when we use The Cement Institute book, for all practical purposes it is the same.

Q. Can you use such information, as you see in the Cement freight rate book, of that character, for any purposes other than pricing?

41573 A. Not that I know of.

By Mr. MacIntyre:

Q. Coming back to Respondents' Exhibit 3363-A to Z-3, since you identified the routing information in that book which you used in connection with making your shipments, do I understand that the statement that you made a few minutes ago to be that you cannot use that information for shipping purposes?

A. There is no routing given in this book.

Q. Well, since it does not have that, then, did I understand you a few minutes ago to testify that you could not use any of that information for shipping?

A. No; I don't think I said that. At least, I did not intend to.

Q. How can you use the information in that book, even under the caption of Rapid City, for shipping purposes, since the routes are not shown?

A. Because it shows our territory, and we compute the freight on the carload of cement.

Q. You have a different freight rate between your Rapid City and various points shown there, depend-

41574 ing on the routes selected?

A. We would have nothing whatever to do with the bill of lading.

Q. And you cannot include a fixed rate from Rapid City to the various points if you alternate your routes?

A. We can do what?

Q. If you alternate your routes to each of the destinations from Rapid City, you cannot use a fixed rate, can you? You have various rates applying over the alternate routes between Rapid City and the various destinations shown in that book; is not that correct?

A. No.

Q. Do you mean that your rates are the same over the alternate routes to each destination shown in that book from Rapid City?

A. Yes.

Q. You have no difference in the rates?

A. I can demonstrate it for you, if you wish, Mr. MacIntyre.

Q. You have into Rapid City there a certain set of rates.

A. Yes, sir.

Q. Applying to various destinations opposite them.

A. Yes, sir.

Q. Is it your testimony, Mr. Hartley, that no rate other than that rate opposite the destination applies, irrespective of the route that you select?

41575 A. We could not ship on that rate except by routes that are listed in the freight tariff.

Q. You have more than one route listed in the freight tariff?

A. Yes, sir.

Q. Between Rapid City and any one of those other points, is it your testimony now, that irrespective of the route that you select, the rate would be the same?

A. The first name in the book is Aberdeen, S. D. We can reach that from Rapid City by the Chicago & Northwestern, the Chicago, St. Paul, Minneapolis, and Omaha, the Minneapolis & St. Louis, in connection with the Milwaukee, or with the Northwestern—all on the same rate.

Q. How about Yankton?

A. We can route into Yankton over the Great Northern, over the Milwaukee to Lenox, S. D., and the Great Northern, via the Chicago & Northwestern, or via the Milwaukee, all on the same rate.

Q. How about Sioux Falls?

A. The same thing applies exactly.

Q. No difference in the rates?

A. No, sir.

Q. Is that true of points outside the State, such as points in Minnesota, to which you ship?

A. Very largely. I could not specifically answer that "yes" or "no."

41576 Q. What about—

A. I have not the Minnesota rate book.

Q. When you say "very largely," you have in mind some exceptions to that rule?

A. I don't know whether there would be any exceptions or not. I just would not know that without having—we do not ship enough over into Minnesota to be very familiar with that territory.

Q. You are not prepared to state now whether the rate should be the same over alternate routes?

A. No, I couldn't positively state that.

Q. On direct examination you were asked the question as to whether an advance of as much as 50 cents per barrel would curtail consumption of cement. What is your answer to that question now, Mr. Hartley?

A. Well, I think I answered, Mr. Examiner, that
41577 I would consider that 50 cents advance would be exorbitant and out of all reason, and I probably would not make any such advance; that is the way I remember my answer.

The Witness: I do not know. I would not be able to answer that.

By Mr. MacIntyre:

Q. Or whether a reduction of 50 cents a barrel would increase consumption?

A. I do not think I can answer that.

Q. You told Mr. Leisure that you did not meet competition in your quotation to the railroads, but that you merely quoted f. o. b. your mill on cars at their rails at your mill.

A. Yes, sir.

Q. Why can't you do that with respect to any customer who would like to buy at your mill?

A. No, I don't think so; any customer don't own a railroad and don't ship over their own rails, and they don't make the requirements that it be loaded in their own equipment, which the railroads do. No, it would be bad business practice.

Q. Well, if they are to pay the freight on it, and
41578 take delivery at your mill, it is the same thing as owning the railroad with respect to the transportation of that cement?

A. Possibly they do not pay the freight on the cement that is shipped now.

Q. I am talking about when they buy it at your mill, they of course pay the freight just as the railroad pays the expense of it.

A. I do not know, sir.

Q. What difference would that make to you if some other customer instead of the railroad buys at your mill and has the railroad to haul it at their expense?

A. I do not know just exactly how to answer that question.

Q. Well, I am asking you what difference it makes to you whether it is the railroad or some other customer that buys on such terms as those, from you, f. o. b. your mill?

A. It has never been tried; I don't know what the reaction would be, and how it would work out. I would not know. I would not know what the result would be. We have never tried it.

Q. Now, on direct examination you told Mr. Leisure that there are certain instances or certain territories in which your quoted delivered price is not the equivalent of a base price plus railroad freight to the destination. Do you recall that?

A. No, I do not recall it.

Q. Well, can you name any instance where that is
41579 the case or has been the case in your experience?

There are special prices made at times, where the quoted circular price is cut, and for possibly a specific job someone will cut the price 10 cents, cut the circular advertised price 10 cents, or any other amount. In that case, it would not be the base price plus freight.

Q. Well, taking into account your published and your competitors' published prices on the circulars, as you call them. Can you recall any instances where they have been anything other then the equivalent of a base price plus freight to the destination?

A. I do not think I could recall any special instance of that kind.

Q. Now, referring to Respondents' Exhibit 3362, which was this map, your mill net on all the shipments, all your shipments that fall within that red circle is the equivalent of your base price?

A. Plus freight, plus container.

Q. I am talking about your mill net, your mill net is the equivalent of what on all your shipments made within that territory bounded in red?

A. Our delivered price minus freight, minus container, minus our freight from our mill, would be the net price in that territory?

Q. Well, your mill net on all shipments within
41580 that red territory are the equivalent of your stripped base price?

A. What if we have to meet a cut price in there?

Q. I am talking about with respect to sales made on your published prices.

A. I presume so.

Q. Well, it is a fact, isn't it; Mr. Hartley, that it equals your stripped base price, your mill net does on all shipments within that red bounded territory?

A. Yes, supposed to be.

Q. Now, on what percent of your total volume do you make these special cut prices below your published circular prices?

A. We do not make those cut prices ever.

Q. Well, you just said that except in those cases your mill net would be your base price.

A. But we do not make those cut prices. We meet cut prices that are made by other people.

Q. On what percent of your total volume of business do you meet or make a price below the circular quoted price in that territory?

A. Very small, in our case.

Q. As much as 2 percent?

A. Not over that.

41581 Q. You told Mr. Leisure you figured your average mill net each 30 days, you made an average of that.

A. Yes, sir.

Q. Do you recall?

A. Yes, sir.

Q. For what purpose?

A. For information. For our own information.

Q. Well why do you need such information?

41582 A. Oh, we need that in our business, in our figuring our profits.

A. Our losses, as the case might be.

By Mr. MacIntyre:

Q. You do not carry on your books an average of your delivered prices for that purpose, do you?

A. No.

Q. Now, you told Mr. Leisure that as far as you know none of your competitors sell and ship into Rapid City. Do you recall that testimony?

A. Yes, sir.

Q. Can you tell us what percent of the total amount of cement consumed in this freight advantage territory en-

circled in the red territory on Respondents' Exhibit 3362 is sold by your competitors?

A. Standard Portland cement?

Q. Yes.

A. Will you specify your question as to standard Portland cement?

Q. Yes, yes, I will limit it to that.

A. Less than 2 percent.

41583 Q. What do you use as a basis for your computation in that answer, Mr. Hartley?

A. The Bureau of Mines' reports, and information given and sent to me by my salesmen in the territory.

Q. Does the Bureau of Mines send you any report showing what your competitors sell in that freight advantage territory of yours?

A. No, sir; but they do for South Dakota, and I know every car of cement that goes into any town in the State of South Dakota, through my salesmen.

Q. It is your testimony that the Bureau of Mines show that you sold all the cement in South Dakota outside of 2 percent?

A. The Bureau of Mines does not specify standard Portland cement, modified Portland cement, high early strength and sulphate-resistant cement is all classed under one head in the Bureau of Mines' reports, but we know in our own office and from our own salesmen how much of that comes in.

Q. And how do you know it through those sources, as to how much your competitors sell in the territory?

A. Because I have the salesmen check it.

Q. And they check your dealers and all dealers' records and books of account in the State for the purpose of determining how much cement they buy?

A. Oh, no. We do not audit their books, no; we do not audit their books. It is not necessary. Our sales-
41584 men know these dealers and know them quite intimately, and have no hesitancy in taking the dealers' word for it, and we have never found them wrong.

Q. You take their word for how much cement they buy from your competitors; is that correct?

A. Yes.

Q. That is the basis of the statement you made as to the amount of cement that your competitors sell in the State?

A. Yes, sir.

Q. Well, now, what is the dealer, the most important dealer that you have in the City of Yankton, S. D.?

A. Quite probably Thompson Yards, Inc.

Q. And how much cement would they buy and sell during the year 1937?

A. I do not know. I have not those figures.

Q. Would you say that you sold as much as 95 percent of their business?

A. Yes.

Q. And how do you determine that?

A. Information given to me by their general manager, or district manager, and their local manager.

Q. Just passed by word of mouth to your salesmen; is that correct?

A. Very largely; yes, sir.

Q. You told Mr. Leisure on direct examination
41585 that you regard your dealers as your salesmen in a sense?

A. In a sense; yes, sir; that is true.

Q. Is it your understanding that when you sold goods to a middle man for re-sale to other people, that he is your salesman when he re-sells his own goods?

A. Not necessarily in those particular words, but, in effect, selling a marked product, he is in effect our salesmen, because he is selling our marked product. It is not a blank product, and it does not have his name on it, but it does have our name on it.

Trial Examiner Norwood: He is helping you dis-
41586 tribute your product.

The Witness: Correct; yes, sir; very true.

By Mr. MacIntyre:

Q. Do you think he is interested from your viewpoint in distributing it and not from his?

A. Oh, I think he is interested in both, very naturally from his own.

By Mr. MacIntyre:

Q. Do you think his own interest would be first and yours second?

A. It would if I was a dealer; yes, sir.

Q. Well, isn't it your understanding that that is his viewpoint?

A. He is a poor merchant if it is not; yes, sir.

Q. Well, isn't it a fact that you sell at your base price to the railroads when they buy f. o. b. cars at your mill in bulk?

41587 A. No, sir; we never sold to the railroad in bulk.

Q. You never have sold to the railroad in bulk?

A. No, sir.

Q. Mr. Leisure asked you if the number of base points in your experience had been fixed. How much change has there been in the number of base points on which you figured your delivered prices in your territory within the past 7 years, Mr. Hartley?

Mr. Leisure: I object to that question. It goes into a period after the complaint.

Mr. MacIntyre: Well, I will limit it.

Trial Examiner Norwood: Answer it with respect to the period prior to the complaint, July 2, 1937.

By Mr. MacIntyre:

Q. Between 1933 and 1937, I will limit it to that period, Mr. Hartley.

A. Very few, if any; not over one or two.

Q. They were fixed within one or two exceptions in that period of time?

A. I do not know whether they were fixed or not, but they were basing points.

Q. Very few changes in that time?

A. Very few changes in basing points in our territory.

Q. In that same period of time how many changes were there in base price applying in your territory?

A. 1933 to 1937?

41588 Q. Yes.

A. I cannot answer that exactly; probably two or three.

Q. In four years?

A. Yes. Not over that.

Q. And were they all on one base price change, or would there be more than one base price change, one for each basing point?

A. Oh, each basing point would put out their own price circulars.

Q. Well, take Mason City, more than once in that period of time?

A. Oh, I could not state that, Mr. MacIntyre, for sure. I rather think they did.

Q. During the period from 1933 to 1937, you think Mason City changed more than once?

A. I think so, but I would not want to be under oath and state as a positive fact.

Q. That is the principal basing point on which most of your prices are made, isn't it, Mason City?

A. As many as any other, at least.

Q. On direct examination you told Mr. Leisure that it was necessary for you to have a standard definition of a dealer. Why is it?

A. Well, we have got to draw the line somewhere on who handles our product.

41589 Q. A person who wants to handle it and offers you the cash for it, does not meet a standard definition, in your opinion, and should not be dealt with; is that correct?

A. Not as a cement dealer, unless he equips himself to become such.

Q. I believe you stated that you even referred invitations from your own State, which owns your plant, invitations to bid to dealers and let them bid to the State.

A. Our State don't buy cement direct.

Q. Well, I know, but you said you referred their invitations to bid which you received to the dealers for your dealers to bid on; is that correct?

A. For the State?

Q. Yes.

A. I do not remember such testimony, because our State—if there was such testimony it was in error in the answer, because our State does not buy cement direct, and never has, to the best of my knowledge.

Q. Well, they could not buy it direct if you referred their invitations to the dealers.

A. They do not necessarily have to buy from us, Mr. MacIntyre. There are other mills who would be glad to sell them.

Q. Is it your testimony your State has never sent you an invitation to bid direct?

A. That is it.

41590 Q. You said you never received it.

A. I do not think they ever sent out an invitation to bid to anybody in the period that we have been in business.

Q. And you never submitted a quotation to them?

A. No, sir.

Trial Examiner Norwood: They let contracts; is that the idea?

The Witness: They let contracts and the contractor furnishes the material.

By Mr. MacIntyre:

Q. And he gets it from a dealer and you supply the dealer; is that correct?

A. Certain of them; certain of them we sell direct to the contractor.

Q. Those that you do not supply direct to the contractors for use on State projects, the dealer, of course, is interested in a profit on that which could be saved to the State if you did sell direct; is that correct?

A. Possibly.

Trial Examiner Norwood: Does your mill turn any revenue into the State?

The Witness: In the form of tax, or something of that kind, do you mean?

Trial Examiner Norwood: No; it belongs to the State, doesn't it?

41591 The Witness: You mean our profits?

Trial Examiner Norwood: Yes.

The Witness: Yes, sir; and so far those profits have been about—there was established by the Legislature a sinking fund and interest, and sinking fund, and that is where practically all of our earnings have been going up to this time, and then there is a further law, passed two years ago, or a year and a half ago, that when sufficient money is in that interest and sinking fund the money shall be turned in to the general fund of the State, and into that fund our cement commission has made one payment.

Trial Examiner Norwood: Well, don't tell me what you pay in there.

The Witness: I was just telling you where it went.

By Mr. MacIntyre:

Q. Mr. Hartley, calling your attention to Respondents' Exhibit 3365-E, and that non-diversion stamp that appears thereon, can you tell me whether or not that you started to use such a stamp prior to June, 1935,—that is, May, 1935?

A. I could not give you the date, Mr. MacIntyre.

Q. Well, is it your recollection it was previous to that date?

A. It is my recollection it was around that date somewhere. It has been in effect some four or five—at the outside six years.

41592 Q. And when you told Mr. Leisure that the railroads recognize that stamp, what did you mean?

A. That they put that on their way bills and they do not authorize diversion of cars without our consent.

Q. You never tested your right as against the desire of a dealer to enforce that against the railroads, however, have you, in a lawsuit?

A. No.

Q. You spoke about loading dealers' trucks at your mill. What prices do you charge, or did you charge them in July, 1937, when you loaded their trucks?

A. I think the differential—I cannot name you the exact price,—but I think the differential was 25 cents a barrel, the same as it is now.

Q. That is, it was 25 cents on top of your base price; is that correct?

A. Yes, sir.

Q. It was the Rapid City base, plus the 25 cents?

A. Plus container.

Q. What?

A. Plus container.

41593 *Redirect Examination by Mr. Leisure.*

Q. As to these special prices, do you meet all special prices, Mr. Hartley?

A. No, sir. By special prices, you mean—pardon me, let me get this straight—were you going to object?

Mr. MacIntyre: I want to know what the question is before I will know whether I want to object.

Trial Examiner Norwood: Read it.

(Question read.)

A. Do you mean cut prices under published price lists?

By Mr. Leisure:

Q. That is what I mean.

A. No, sir; we do not meet them all.

Q. Now, don't you find that your competitors sell railroads f.o.b. mill?

A. Yes, sir.

Q. So that in selling them in that way are you doing anything more than meeting your competition?

A. No, sir.

Q. Do you have your own books, Mr. Hartley, for States outside of South Dakota?

A. Our rate books?

Q. Yes.

A. Not complete in any case, they do not cover every town. They cover the towns outside of the State,
41594 where we might want to quote prices and might ship, and sometimes do.

Q. And do you use those books for shipping purposes?

A. We use them in computing prices and for our freight rate.

Q. Now, as to these books you have been getting from The Cement Institute, you said you ordered them in the beginning. Have you ever requested that since you placed that initial order that they be discontinued?

A. No.

Q. Do you have a practice of reporting important matters in your business to your commission?

A. Oh, yes.

Q. Is it your practice to take up all important matters with them?

A. Yes, sir.

41595 Q. Have you read the testimony in this case, Mr. Hartley?

A. No, sir.

Recross Examination by Mr. MacIntyre.

Q. You told Mr. Leisure that in quoting to railroads f. o. b. your mill you were meeting competition; you mean as to method there, do you, and not as to price?

A. As to method.

Q. But you did not mean as to price?

A. Oh, no.

41596 Washington, D. C.,
Wednesday, June 19, 1940.

41597 B. E. MANLEY, called as a witness for the Respondents, being first duly sworn, testified as follows:

Direct Examination by Mr. Seeley.

41599 I am connected with the Hawkeye Portland Cement Company, Des Moines, and have been with Hawkeye since 1916. I am general manager.

41600 Counsel for the Respondents and Counsel for the Commission have entered into the following stipulation with respect to this witness:

It is hereby stipulated and agreed that the witness, B. E. Manley, general manager of the Hawkeye Portland Cement Company, shall be deemed to have given direct testimony in this proceeding, subject to the conditions agreed upon with respect to the stipulated testimony of Charles Horner, which appears heretofore in this record at page 36801.

The stipulation is that witness Manley's evidence may appear of record as follows:

41601 (1) The Hawkeye Portland Cement Company was organized January 15, 1916. Its office and place of business is in Des Moines, Iowa. It has no branch offices and no warehouses or silos, other than those situated at its plant.

(2) The Hawkeye Portland Cement Company operates one cement plant which is located at Des Moines, Iowa. This plant was built in 1907 by the Iowa Portland Cement Company and was operating property at the time it was acquired by the Hawkeye Portland Cement Company. Portland cement has been manufactured at the plant location of the Hawkeye Portland Cement Company since 1910. The Hawkeye Portland Cement Company has never operated, or had any interest in, any cement plant other than the plant at Des Moines, which is described above.

(3) Des Moines was chosen as a site for the location of the cement plant of the Hawkeye Portland Cement Company for several reasons: Availability of excellent transportation facilities— there are nine railroads entering Des Moines, which furnish prompt delivery service to

all destinations in the sales territory of the Hawkeye Portland Cement Company. Availability of fuel suitable for use in the manufacture of Portland cement.

41603 (6) The Hawkeye Portland Cement Company has kept its plant modernized at all times. Since witness has been with the company, the Hawkeye management has expended over one million dollars on improvements to modernize its plant and increase the quality of its product. Among the steps which the Hawkeye Portland Cement Company has taken, with a view to modernization and improving its plant, has been the installation of waste heat boilers at a cost of $277,000, the erection of new silos at a cost of $123,000, extensive improvements in the equipment and operation of its quarry at a cost of $121,000, remodeling of its power plant at a cost of $166,000, the installation of coal pulverizers at a cost of $116,000. All of these improvements have been made necessary by the higher quality requirements created by competition.

In spite of all these improvements, the cost of pro-
41604 duction of the Hawkeye Portland Cement Company has constantly increased.

(7) Except for short periods of shutdown, the Hawkeye Portland Cement Company has operated its plant continuously since it was acquired in 1916. The Hawkeye Company has no fixed policy or practice with regard to shutdowns. It has never had any predetermined period of shutdown. The Hawkeye Company shuts down its plant when it considers its storage is filled up. It does not resume operations until it has shipped out a sufficient amount of cement to create additional storage space.

(8) The rate of operations of the Hawkeye plant is and has always been determined by the company's own management, relying on its own experience and judgment, entirely independent of any contact with or influence from competitors. When the Hawkeye Company is operating its plant, it runs continuously seven days a week and keeps on running until it fills its storage up. The Hawkeye Company has never operated on any six-day week or any other so-called plan of operation other than has been described above. The Hawkeye Company endeavors to avoid, as much as it can, the tremendous expense and loss involved in shutdowns due to the cooling and reheating of kilns, the injury to kiln linings, and the idle expense involved, which amounts to $40,000 a year. When the

Hawkeye plant is operating, the number of kilns which it
operates depends upon the amount of storage it has
41605 on hand and the operation which gives it the
greatest efficiency. At times the company has operated less than six kilns, but it has found, due to operation of its waste heat boiler equipment, that it does not get as great efficiency when operating a lesser number of kilns. The Hawkeye Company develops all of its own power at its plant by means of its waste heat boiler system.

(9) The Hawkeye Portland Cement Company has an annual storage capacity of 370,000 barrels of finished cement. When the plant was first built in 1910, the storage was sufficient for 120,000 barrels of cement. In 1916, at a time of increasing demand for cement in its sales territory, the Hawkeye Company built additional storage sufficient to handle 100,000 barrels of cement. In so doing the Hawkeye Company took into consideration the existing state of the demand for cement, as the Hawkeye Company found it. In 1923, in order to modernize its storage facilities and make its stocks on hand more readily available, the Hawkeye Company built modern silos to accommodate 150,000 barrels. These facilities have largely supplanted the old flat buildings which were not as satisfactory to operate. Since 1923, the Hawkeye Company has made no change in its storage capacity. In deciding what storage capacity it would construct or maintain, the Hawkeye Company has not been influenced in any way by its competitors.

(10) The Hawkeye Portland Cement Company
41606 has never had any so-called practice of "curtailing
production." The company has at all times attempted to reach out for all the business it could get in order to secure the volume which is necessary to operate continuously, and at the fullest possible capacity.

(11) The Hawkeye Portland Cement Company does not use any clinker capacity figures nor does it make any use whatsoever of clinker statistics in planning its operating schedules. The Hawkeye Company attempts to estimate how much it is going to ship according to general business prospects. The Hawkeye Company receives reports on prospective cement consumption and on building and other types of construction which indicate general business conditions. The Hawkeye Company also

keeps posted on current business conditions through the local information it collects from dealers and other customers.

(12) The Hawkeye Portland Cement Company subscribed to the service of W. S. Mallory in 1930. The Hawkeye Company had no knowledge as to whom the other subscribers were. The Hawkeye Company used the so-called Mallory forecasts on prospective cement consumption in an effort to keep posted on prospective cement demand. The Hawkeye Company never relied on the so-called Mallory Forecast as to the requirements of the cement industry in its sales area, but it found that information helpful in conjunction with the Dodge Re-41607 ports and other information which the company receives locally, as a means of keeping informed on general business conditions.

(13) During the N. R. A. Code period, the Hawkeye Company was represented at the industry meetings at which a so-called Plan for Sharing Available Business was discussed. The Hawkeye Company understood that the purpose of that meeting was to give consideration to some plan that would carry out the provisions of the N. R. A. Code. No plan for sharing available business ever came into operation in any of the sales territory of the Hawkeye Portland Cement Company to the knowledge of witness or any official of the company, and there has never been any allocation of business to the knowledge of witness or any official of the Hawkeye Company in any part of the sales territory of the Hawkeye Company.

(14) Except for the consideration given to the so-called Plan for Sharing Available Business, under the N. I. R. A. Cement Code (Commission's Exhibit No. 557), the Hawkeye Portland Cement Company has never had any discussion or contacts with competitors concerning the capacity of its plant, or of any other cement plant. During the period that that plan was being discussed, the Hawkeye Company did not in any way curtail its production or its sales efforts and it did not observe any abatement in the sales efforts of any of its competitors. The Hawkeye Company has no knowledge, nor has it ever heard of any so-called quotas being used in the cement industry.

41608 (15) Witness has examined Commission's Exhibit No. 3205-A-E, which purports to estimate the capacity of the Hawkeye plant at 1,675,000 barrels, and Commission's Exhibit No. 2917-A-T, which purports to estimate the capacity of the Hawkeye plant at 1,621,000 barrels. The Hawkeye Portland Cement Company has never had any agreement or understanding to produce the amount of cement indicated in either Commission's Exhibit 3205-A-E or Commission's Exthibit 2917-A-T, nor has it ever had any agreement or understanding to produce 1,750,000 barrels of cement, which is the capacity reported by the Hawkeye Portland Cement Company in response to the request of the Federal Trade Commission dated January 1, 1932 (Commission's Exhibit 3142-E), or any other particular amount of cement. On the contrary, the Hawkeye Company is and has been perfectly free at all times to operate its plant and shape its policies in accordance with the best business judgment of its own management.

(16) The Hawkeye Portland Cement Company manufactures Standard Portland cement and high early strength cement. It has manufactured a cement of high early strength since 1932. Prior to 1932, the Hawkeye Company had a little demand for high early strength cement. Prior to 1932, when the Hawkeye Portland Cement Company had a call for any high early strength cement, it accommodated its customers by purchasing such requirements.

41609 (17) The Hawkeye Portland Cement Company has never taken any steps to obstruct, or limit, or discourage so-called special specifications. The Hawkeye Company has never declined to make any specification of cement requested by its customers. The Hawkeye Portland Cement Company, of course, favors standardization because it tends to reduce costs of manufacture and the investment and expense involved in expansion of special storage facilities for each new specification.

(18) The quality of Hawkeye cement is, and always has been, above the minimum specifications of the American Society for Testing Materials and the Federal Bureau of Standards of the United States Government. The Hawkeye Company has found that in order to compete, its cement must compare favorably with the highest qual-

ity of competitors' cements that it meets in the markets where it does business. Consequently, the Hawkeye Portland Cement Company has had to exceed standard specifications considerably.

(19) The high early strength cement of the Hawkeye Portland Cement Company exceeds the specifications of the American Society for Testing Materials and of the Federal Specifications Board, due to the competition which it meets with the high early strength cement of other manufacturers. Hawkeye finds that it must make its product considerably above the minimum requirements of the standard specifications in order to satisfy its customers.

41610 (20) The Hawkeye Portland Cement Company has never taken any measures, or made any effort, to discourage its competitors from advertising the quality or other merits of their product.

(21) The Hawkeye Portland Cement Company does not confine its solicitation of business to any fixed area. It solicits business and ships cement into the States of Iowa, Nebraska, and Minnesota. It occasionally ships into northern Missouri and North and South Dakota. The Hawkeye Company has never had any agreement with any competitor, or competitors, in regard to what territories it would or would not solicit. It has never concerned itself with the sales area that any particular competitor was soliciting.

(22) The Hawkeye Portland Cement Company is occasionally requested by local contractors, and other customers, to furnish requirements at points outside the territory in which it normally solicits business. The Hawkeye Company ships outside the area in which it solicits business, when a friendly contractor or an old dealer customer requests Hawkeye cement if the company feels that it is to its advantage to do so. For example, Hawkeye has contractors who have been using its brand 100 percent, and the company is willing to follow them outside its normal sales territory to some extent, upon request, although the return on a particular sale is not satisfactory to the company.

41611 (23) Normally the factors that determine the territory in which the Hawkeye Company solicits business are the yield which the business nets at its mill; its

ability to render service comparable with competitors; its relationship with the dealer or sales resistance; and the probable future business involved. In some cases Hawkeye has not solicited business in parts of the area into which it occasionally ships, because of inability to give competitive service and because of the expense incident to establishing sales contacts in an area in which it has not steadily solicited and built up a following. These factors have tended to confine the sales of the Hawkeye Company within a smaller area than the territory in which it would take business so far as its mill nets alone are concerned. The Hawkeye Portland Cement Company has always sold the great bulk of its business within the State of Iowa. During the ten years prior to July 1, 1937, the cement which the Hawkeye Company sold and shipped annually to markets within the State of Iowa comprised, on the average, 85 percent of its total annual shipments.

(24) The Hawkeye Portland Cement Company does not have any definite mill net below which it will sell. Whether it will take business is a matter of determination on a given sale, giving consideration to the fact that volume of sales is important because it reduces costs.

(25) The Hawkeye Portland Cement Company, 41612 travels salesmen in all of the territories in which it regularly solicits business. It has eleven salesmen at the present time, which is the largest sales force the company has ever had. The Hawkeye Portland Cement Company is a small independent cement company. The sales expense of the Hawkeye Company is a variable factor and it is impracticable to determine the sales expense applicable to each sale. Frequently, where the Hawkeye Company ships an order a long distance, the sales and incidental expense is small. Conversely, the Hawkeye Company frequently ships orders a short distance with large extra expense, such as special solicitation, long distance telephone calls, entertainment, and the furnishing of special facilities.

(26) It has been the experience of the Hawkeye Portland Cement Company that it is necessary at times to continue to solicit a market where its net return on sales has been unsatisfactory, in order to obtain the sales volume necessary to operate its plant continuously, and in order to maintain its following and keep its brand before the public in its markets. The establishment of customer con-

tacts is a long and expensive process, and the time and expenditure used in developing a market is regarded by the Hawkeye Company as an investment. The Hawkeye Company has found that the demand for cement in its marketing area varies from season to season and fluctuates from time to time in many of its mar-
41613 kets. It has found that the demand for cement varies geographically.

(27) Since the witness has been with the Hawkeye Company, other mills have been erected to serve the area in which Hawkeye solicits business, namely: The Pyramid Portland Cement Company, West Des Moines, Iowa; The Gilmore Portland Cement Company, Gilmore City, Iowa; The Dewey Portland Cement Company, Davenport, Iowa; The Ash Grove Lime & Portland Cement Company, Louisville, Nebr.; The South Dakota Cement Plant, Rapid City, South Dakota. The establishment of these new sources of supply has affected the volume of business of the Hawkeye Portland Cement Company and has compelled it to exert increased sales effort in order to get business.

(28) In the territory in which the Hawkeye Portland Cement Company solicits business today it comes into competition regularly with seventeen other cement producing companies, namely: The Northwestern States Portland Cement Co., The Nebraska Cement Company, The Universal Atlas Cement Company, The Penn-Dixie Cement Company, The Lone Star Cement Company, The Missouri Portland Cement Company, The Consolidated Cement Company, The Ash Grove Lime & Portland Cement Company, The South Dakota Cement Plant, The Monarch Cement Company, The Alpha Portland Cement Company, the Lehigh Portland Cement Company, The Marquette Cement Manufacturing Company, The Dewey Portland Cement Company, The Medusa Portland Cement Company, The Huron Portland Cement Company, and The Petoskey Portland
41614 Cement Company. The Hawkeye Company has found that all of the aforementioned competing cement companies extensively solicit business in some part of the territory in which the Hawkeye Company solicits. There is no market in its sales area in which it does not find a large number of other competitors soliciting business. In general, throughout its sales territory in any one market the company has found that business is being canvassed by at least six of the above named competitors.

(29) The Hawkeye Portland Cement Company has never come into competition with imported cement. To witness' knowledge the Hawkeye Portland Cement Company has never come into competition with any domestic cement mill that does compete with imported cement. Witness knows of no dealers or prospective dealers of the Hawkeye Portland Cement Company who have ever dealt in imported cement.

(30) The Hawkeye Portland Cement Company has never taken any measures of any kind, concerted or otherwise, with respect to the competition of imported cement and has never expressed any interest in the subject. The Hawkeye Portland Cement Company has never been a party to any agreement or understanding regarding imported cement.

(31) The Hawkeye Portland Cement Company receives news of changes in competitive prices or policies very quickly. Ordinarily, it obtains such information as
41635 soon as the competitor's announcements are in the hands of its dealers. The Hawkeye Company is generally fully aware of competitive changes in prices or policies through information which its salesmen obtain in the field or which its dealers communicate direct to the Hawkeye sales office.

(32) The Hawkeye Portland Cement Company has found that building material dealers and contractors are well informed as to prices being quoted on cement. It has found that cement purchasers compare the prices quoted by the various companies and shop around in order to obtain lower prices. It has found that its regular customers give it an opportunity to meet the lower prices of competitors.

(33) The Hawkeye Company has found that the market or "going" prices usually reflect a mill base at some cement plant. The Hawkeye Company always endeavors to quote the lowest quoted price it knows of at each point where it sells cement, whether or not that price reflects a mill base. The Hawkeye Portland Cement Company attempts to determine what prices are actually being paid by purchasers of cement in its market area as well as what prices its competitors are quoting.

(34) The Hawkeye Company takes the quotations which it finds and endeavors to figure them back to the various mills in order to simplify the process of gathering information. Immediately, upon learning of a price change
41616 at any point in its sales area, The Hawkeye Company gets in touch with its salesmen and as many of its

dealers as possible to ascertain how large a part of its territory is affected by the price change. The Hawkeye Company deducts the freight rates applicable from various mills, and repeats that process in order to determine whether a particular mill base is being used. It checks quotations at a considerable number of points, and if it discovers that they relate constantly to a certain mill, it assumes that that mill is a so-called basing mill.

(35) The Hawkeye Company obtains its information as to competitors' prices from its customers, such as dealers and contractors, who give the information to the Hawkeye salesmen, or mail or telephone it to the Hawkeye office. This is the only source of information that Hawkeye has as to competitors' prices.

(36) When the Hawkeye Company is satisfied that there has been a price change in its marketing territory, it does not check competitive prices at every destination in the immediate area before sending out its own quotations. It takes the new prices which it has learned of and by deducting the freight from all mills in its marketing territory to the destinations involved, it attempts to determine whether the prices reflect a mill base at some producing mill.

(37) The Hawkeye Company has no assurance that the prices it quotes are the lowest prices that will be
41617 quoted at any destination. It has no foreknowledge as to which mills are so-called basing mills or of what the so-called mill base may be at any particular mill. The Hawkeye Company has come into competition with numerous so-called basing mills in its sales area. It has determined from competitors' quotations, picked up by salesmen or sent in by its dealers, that mill bases have existed from time to time at the cement plant locations at Mason City, Iowa; Hannibal, Mo.; LaSalle, Ill.; Dixon, Ill.; Sugar Creek, Mo.; Louisville, Nebr.; Steelton, Minn.; Rapid City, S. D.; Iola, Kansas; Buffington, Ill.

(38) None of the prices which the Hawkeye Company has ever found in its marketing territory has reflected a mill base at a non-producing point nor has the Hawkeye Company ever used any non-producing point as a mill base.

(39) The Hawkeye Company has never had any understanding or agreement with any of its competitors with regard to the establishment or maintenance of any particular mill as a basing mill, or with regard to the amount of the mill base at any particular mill, or with regard to the prices it will charge for its cement.

(40) The Hawkeye Company has never received information as to prices or mill bases in the form of lists or otherwise from any of its competitors and has never sent such information to any of its competitors. It has never published a list of mill bases.

41618 (41) The Hawkeye Portland Cement Company has never owned or operated any barges and has never employed water transportation in the shipment of cement or clinker. The cement plant of the Hawkeye Portland Cement Company is located 175 miles from the nearest waterway and is so situated that water transportation is not available as a means of distributing its cement. In order for the Hawkeye Portland Cement Company to employ water transportation at all, it would be necessary to ship its product part of the way by rail and then transfer it to barges. Such a procedure involves additional expense in trans-shipment and the total cost of the transportation by such means exceeds the all-rail cost to destination.

(42) There has never been any customer demand upon the Hawkeye Portland Cement Company for delivery of cement by water. None of the customers of the Hawkeye Portland Cement Company has ever been deprived of any available saving in the cost of transportation, to witness' knowledge. There is no cheaper-than-all-rail transportation by which the Hawkeye Portland Cement Company can transport its cement to witness' knowledge.

(43) The Hawkeye Portland Cement Company has never entered into any agreement to refrain from or restrict the use of water transportation nor has it ever had any agreement or understanding with any of its competitors regarding the method of delivery the company would use in
41619 distributing its product.

(44) The Hawkeye Portland Cement Company has for many years prepaid freight charges on shipments of Hawkeye cement to so-called "prepay" stations, on shipments to State Highway Departments, and on shipments to its commercial customers where the customer requested the company to prepay freight and where the arrangement worked out satisfactorily to the Hawkeye Company and to its customers. This was done as an accommodation to the company's customers. On other shipments to commercial customers, the customers have paid the freight charges at destination, for the account of the Hawkeye Company, as part payment of the purchase price.

(45) Since January 10, 1940, it has been the policy of

the Hawkeye Portland Cement Company to prepay freight on all of its shipments in order to meet competition. The assumption of prepayment of freight charges on shipments to all customers has created a heavy financial burden upon the Hawkeye Company because the added cost of this service has not been passed along to the customer. However, the Company has been obliged to make this undertaking in order to retain its customers who it found were being offered this service by competitors of the Hawkeye Company.

(46) The Hawkeye Company learned of the action of some of its competitors in prepaying freight on all shipments through announcements, some of which were picked up by Hawkeye salesmen and some of which were
41620 sent in by its dealers. The policy contained in these announcements represented an advantage to the dealer, since he was not required to pay the freight before receiving the shipment.

(47) The Hawkeye Company waited until January 10th to meet this marketing change which, according to the announcements it picked up, was first announced by a competitor on December 29th, because it wished to observe whether the change would become general. While the Hawkeye Company was considering whether or not it would offer a like service to its trade, several of its customers, before placing orders, asked the Hawkeye Company whether it was going to give them this service. The Hawkeye Company decided that because of competitive advantage it would have to, and did, follow this practice of prepaying freight on all shipments, in spite of the fact that it requires large cash balances on hand to make payment for transportation charges.

(48) The Hawkeye Portland Cement Company is a member of The Cement Institute. The Hawkeye Company has never understood or considered that it was a function of The Cement Institute to interpret any marketing policies or to concern itself with prices, and The Cement Institute has never interpreted any matters of policy nor concerned itself with prices, to the knowledge of the Hawkeye Cement Company.

(49) The Hawkeye Company understood that the Insti-
tute, under the N.I.R.A., was to serve as a trade asso-
41621 ciation through which the cement industry could co-operate with the Government as provided for by the N.I.R.A.

(50) After the end of the N.I.R.A., the Hawkeye Company understood and believed that the Cement Code, in some form, was going to be revised and that The Cement Institute was to continue as a medium, through which the Government negotiated with cement manufacturers in carrying out legislation and administrative orders.

(51) The witness recalls a so-called Trade Practice Committee of The Cement Institute. The Hawkeye Company never considered that the Trade Practice Committee had any authority or power. The Hawkeye Company understood that the Trade Practice Committee provided, temporarily, facilities for voluntary price filing by members of the industry, with a view to carrying forward the benefits of the N.R.A. Code, until such time as further legislation or administrative orders were issued.

(52) Since the end of the N.R.A. Code period The Cement Institute, so far as the Hawkeye Cement Company is concerned, has been inactive, the only services received by the Hawkeye Company being a freight rate service, a statistical service, and the services of a Bag Tax Committee which secured substantial refunds for the Hawkeye Company on taxes the company had paid on floor stocks of cement sacks.

(53) Witness recalls a so-called Marketing Research Committee of The Cement Institute. The Hawkeye
41622 Company understood that the function of that committee was to provide for an independent study, by economic experts, of the marketing methods of the cement industry. The Hawkeye Company received a questionnaire prepared by Professors Clark and Burns. (Commission's Exhibit No. 976-12-W-13-H.) In answering that questionnaire the Hawkeye Portland Cement Company understood that the purpose was to furnish the facts and materials regarding the marketing methods and practices prevailing in the cement industry. These methods and practices had been criticized by certain Government officials and politicians and it was the desire of the Hawkeye Company to have its methods and practices plainly understood. The Hawkeye Company had no contact with Professors Clark and Burns other than in submitting its answers to said questionnaire. In answering this questionnaire the Hawkeye Company presented the facts as it found them. There was no effort on the part of Hawkeye Company to influence Professors Clark and Burns, and the company

has no knowledge or information of any alleged influence by anyone in the cement industry.

41623 (56) In order to compete successfully with its numerous competitors, the Hawkeye Company has found it necessary to offer various services, including those of a technical nature, to its customers and prospective customers. The Hawkeye Portland Cement Company, through its technical advisors, renders services to dealers, to contractors, to ready-mix plants, to concrete products plants, to architects, to engineers, and to prospective customers, as well as to customers, of the nature of determining quantities of materials required for concrete, interpreting concrete specifications, and testing and 41624 checking aggregates. The Hawkeye organization is in continuous contact with local consumers who are not trading with Hawkeye dealers in an effort to induce them to purchase Hawkeye cement.

41625 (60 All of the services aforementioned are of considerable money value to the customers of the Hawkeye Portland Cement Company. These services have varied in value from time to time with different customers, and the Hawkeye Company has obtained business on the basis of such services, which it gives regularly to its customers and prospective customers.

(61) The Hawkeye Portland Cement Company is opposed to the diversion of its cement shipments in 41626 transit and it attempts to discourage such diversions. The company has had such a policy without any change for at least 23 years, to witness' knowledge. The purpose of this policy of the Hawkeye Company in regard to diversion of its cement in transit is to protect the dealers who handle its cement regularly, and to retain their good will.

(62) The Hawkeye Portland Cement Company has had very little experience with diversions. It has, on a few occasions, found that a diversion has taken place and the diverted shipment turned up at a destination where the Hawkeye Company had an established dealer and that dealer complained to the Hawkeye Company and threatened to discontinue handling the Hawkeye brand.

(63) The Hawkeye Company has never had any agreement with any of its competitors with respect to diversions of cement in transit nor has it ever taken any concerted action or other steps in regard to diversions. The policy,

of the Hawkeye Company toward diversions of its cement has been based solely on its desire to cultivate friendly, loyal, dealer relations. There has never been any pressure put upon the Hawkeye Company by any of its competitors or by any dealer association or group in regard to countenancing diversions or to preventing diversions.

(64) The Hawkeye Company for a time loaded customers' trucks at its plant. The experience which the
41627 Hawkeye Company had with trucking was as follows: Many of the dealers who were large customers of the Hawkeye Company complained that the Hawkeye Company was in direct competition with them in selling cement for truck delivery in less than carload lots. They contend that the company was discriminating against them by permitting outside dealers to truck cement into their market. It had always been the policy of the Hawkeye Company to market its cement in carload lots because the carload lot is the most economical unit of sale.

(65) The Hawkeye plant was never properly equipped for truck loading, and during the period when trucking increased, it disrupted the operations at the Hawkeye plant and interfered with the proper handling of carload business. There was no regular truck service, and at times the mill office was in confusion. At other times, there would be no demand for trucked cement at all. Trucking created dissention among the packers at the Hawkeye plant who were paid on a piece-work basis and complained when asked to load trucks.

(66) Trucking created unsatisfactory credit situations which were embarrassing and unsatisfactory to the Hawkeye Company: On several occasions the Hawkeye Company loaded trucks with cement, accepting the driver's word that he was purchasing it for a Hawkeye dealer. The Hawkeye Company invoiced the dealer, and it turned out that the transaction had been misrepresented and Hawkeye did not get paid for its cement.

41628 (67) The number of complaints from dealers and the annoyance and extra expense attached to sales for truck delivery increased to such an extent that, in view of its experience, the Hawkeye Company decided to and did discontinue loading trucks at its plant.

(68) The Hawkeye Company has never charged 15 cents extra for loading trucks, nor has it ever charged any premium for loading trucks, nor has it ever had any agree-

ment or understanding to make any extra charge for loading trucks. Neither the loading of trucks nor the discontinuance of trucking has any effect on the prices of Hawkeye cement. The Hawkeye Company has never had any agreements or understanding with competitors in regard to trucking cement. The Hawkeye Company has never owned or operated any trucks for the delivery of cement. It has never established any warehouse in any part of its sales territory.

(69) The Hawkeye Company has never had any agreement with any railroad or railroad official in regard to trucking or in regard to so-called short-haul rates. The Hawkeye Company has never participated in any discussion or consideration of short-haul rates.

(70) The dealers of the Hawkeye Portland Cement Company are the primary outlet for its cement. By a dealer the Hawkeye Company means a concern that has an established lumber business or handles building ma- 41629. terials, such as sand, plaster, etcetera, and is equipped to handle cement in carload lots and render services in connection with it in his community.

(71) The Hawkeye Portland Cement Company has always favored its dealers as a primary outlet for its product because most of the cement used in its sales territory is consumed in small quantities and requires the kind of services that only dealers can provide. Every dealer of the Hawkeye Company is a cement salesman, promotes the sale and reputation of the Hawkeye product, and pushes the sale of cement as against the many competitive materials.

(72) The Hawkeye Company has found that on the business it sells direct to consumers its salesmen spend an unusual amount of time and effort. The Company cannot render services to small consumers as economically as such services are supplied by dealers. There has never been any middleman, other than the dealer, between the Hawkeye Company and the consumer.

(73) In connection with the sale of cement in small quantities, it is highly important that the customer's credit be adequate. The Hawkeye Portland Cement Company has no facilities for checking the credit of the innumerable small users. The carrying of the consumer accounts is one of the valuable services performed by the dealers of the Hawkeye Company.

(74) The Hawkeye Company has no set rule as
41630 to whom it will sell to as a dealer. It does consider whether or not the company has another dealer in the same town, the size of the town, and whether it would be to the advantage or disadvantage of the company to sell to another dealer there. In smaller communities, the Hawkeye Company looks for different qualifications on the part of its dealers than it does in larger towns. The Hawkeye Company has never had any rule as to how many dealers it will have in a town.

(75) The salesmen of the Hawkeye Company are acquainted generally with the dealers with which the company has been doing business over a period of years. If a new concern starts up in their territory, they report the fact to the home office and give their recommendations for soliciting the business. The decision as to whether the company will sell the new account rests with the sales office.

(76) In deciding whether it will sell to any dealer, the Hawkeye Company does not give any consideration to whether or not the prospect is being sold by other manufacturers. The company has never discontinued selling to any dealer because a competitor did so. The Hawkeye Company has always sold to dealers who were not being sold by its competitors.

(77) The Cement Institute has never had anything to do with who the Hawkeye Company sells as a dealer. The Hawkeye Company has never had any understanding or
41631 agreement with any competitor as to who it would recognize as a dealer or as to what the qualifications of a dealer should be.

(78) It has never made any difference to the Hawkeye Company whether or not its dealers belong to any association. The company has sold consistently to dealers who were not, to its knowledge, members of any association.

(79) The Hawkeye Company attempts to select its dealers according to their ability to render adequate and proper services to the consumer. It has found through the years that any dealer without a proper investment and equipment cannot be expected to remain long in business. Moreover, Portland cement which is not properly stored and handled becomes unsatisfactory in performance and reflects on the reputation of the company. The Hawkeye Company considers the future business which it can ex-

pert to get and tries to build up and retain the good will of substantial, reliable dealers who represent "repeat business."

(80) Witness is familiar with the so-called definition of a cement dealer contained in the N. R. A. Cement Code. There was no substantial difference between that description of a dealer and the facilities and equipment which the dealers of the Hawkeye Company, generally, have always had.

41632 Mr. Paulson: Pursuant to the stipulation, in accordance with its terms, we state the following objections:

41633 Paragraphs (45), (46), and (47) discuss matters
41634 which arose after the issuance of this complaint. For instance, prepaying of freight on the greater volume of the business, that we think is outside of the scope of the issue.

41635 By Mr. Seeley:

I have been with the company since 1916. I am
41636 general manager, and am also the sales manager. I succeeded C. B. Condon as general manager. Mr. Condon died January 26, 1938. I am the chief executive officer of the company.

I came to work in 1916 as Mr. Condon's stenographer and continued in that capacity up until May, 1918, and after the war returned to the company in July, 1919 and my work was chief clerk in the sales and traffic department until 1922, and [when] I was appointed purchasing agent with my office at the plant office. I came back to the office on February 15, 1933, as assistant to the general
41637 manager and sales manager. I was never connected with any other cement company other than Hawkeye. The officers of Hawkeye are: Mr. L. F. Crofoot, Omaha, Nebraska, president; Mr. J. H. Coleman, Minneapolis, Minnesota, is vice president. Mr. Readinger is treasurer. None of these men that I have mentioned have anything to do with the marketing or selling end of the business. I am also in charge of the operations of the plant. Since I have been with Hawkeye what traffic matters there are handled in our sales department, and I was directly in that department for several years. The Federal
41638 Trade Commission, in a questionnaire, requested information from Hawkeye in 1931 regarding the organization of the company. Com. Ex. 3142 helps him re-

call. No other cement manufacturing company or cement selling company owns any stock in Hawkeye, or has "it" ever owned any stock in Hawkeye. No executive or representative of any other cement company, to my knowledge, holds any stock in the company, or have they ever held any stock in the company. There are no directors or officials of Hawkeye who are directors or officials of any other cement company, nor have there been directors or officials of Hawkeye who have been directors or officials of other cement companies. There has never been any affiliation or connection between my company and any other company in the cement industry.

41641 Q. Mr. Manley, does the Hawkeye Portland Cement Company make any notation on its bills of lading with respect to reconsignment or diversion in transit of cement which you ship?

A. We stamp it.

Q. And how long has that been your practice to
41642 stamp the bills of lading with such notation?

A. (No response.)

Q. Well, perhaps I can—

Mr. MacIntyre: What was the answer?

The Reporter: No answer.

By Mr. Seeley:

Q. Can you answer that without having your recollection refreshed?

A. Probably not exactly, but I imagine about 2 years.

Q. Well, tell me further, how did you come to adopt such a practice? How did it come to your attention, if it did?

A. Well, we knew from bills of lading that we had received from other cement companies that they were doing it, and it was general information in railroad circles that competitive companies were doing it, so we adopted the policy to prevent any diversion.

Q. You said it came to your attention that other companies were doing it. Did in addition to— Well, let me ask you: How did that come to your attention?

A. Well, we purchased material from other cement companies, and they had their bills of lading stamped that way, and the railroad companies had told us in Des Moines that it was being done in other places.

41643 The witness identified Resp. Ex. 3369-A-B as a bill of lading dated April 22, 1936, covering a car-

load of masonry cement, shipped to Hawkeye by Medusa, and shows the stamp preventing reconsignment or diversion. At that time, April 22, 1936, Hawkeye was not stamping its own bills of lading.

The witness identified Resp. Ex. 3370 A-L as original bills of lading made out by Hawkeye covering shipments of cement in June, 1936 that do not carry any stamp.

41644 Hawkeye got these bills of lading from the M. & St. L. Railroads. They were taken out of their files at his request and that is why they are torn off at the top.

41647 Trial Examiner Norwood: Well, he could tell us that, and put in this one to illustrate, and put in this other one.

I will overrule the objection in so far as receiving Respondents' Exhibits 3370-A and 3369-A, 3370 being representative of five other invoices issued to different parties on the same date. I think that shortens the record.

(RESP. EXS. 3369-A, 3369-B, 3370-A, 3370-B were offered and received in evidence.)

By Mr. Seeley:

Q. Mr. Manley, was the Hawkeye Portland Cement Company ever approached by any of its competitors with regard to the use of a bill of lading stamp, to your knowledge?

A. No.

41648 By Mr. Seeley:

Q. One more question, Mr. Manley, on this subject: Does your company, the Hawkeye Portland Cement Company, make shipments over the Rock Island Railroad?

A. Yes.

Q. And did any representative or agent of the—well, did any representative of your company have any conversations with any traveling agent of the Rock Island Railroad regarding the practice of stamping the bills of lading?

A. In 1936, around that time, we did.

Q. Was that prior to or subsequent to the bill of lading of the Medusa Company there which you identified?

A. It was after that time.

Q. It was after this time?

A. Yes.

Q. Mr. Manley, in the case of loss or damage to its cement in transit, does the Hawkeye Portland Cement Company assume the loss, or does the customer assume the loss? What is your practice in that practice,—in your company?

A. Well, to protect ourselves we ask the dealer who has received any damaged cement to have a proper notation made on the freight bill and send it in with a memorandum on his loss, and we, in a good many cases, give him credit right off the reel, and file claim for it.

41649 The witness identified Resp. Ex. 3371-A to 3371-G as a credit memorandum, dated October 9, 1925, issued in favor of Johnson Lumber Company, Auburn, Iowa, for damaged cement. The claim paper is made out in the name of the Hawkeye company, and dated October 12, 1925. Hawkeye gave credit to the customer on October 9th and filed the claim on October 12th. There has been no change in Hawkeye's practice in respect to transactions of this nature from the time he came with the company until 1925, and there has been no change

41650 in the practice since 1925.

Examination on Voir Dire by Mr. Paulson.

Q. Do these papers show whether or not the railroad honored the claim for damages that you made in your claim?

A. Yes.

Q. You say they do show that?

A. The notation on the corner.

Q. Where is that?

A. It says there "Paid," paid November 11, 1925.

Q. Who made that notation?

A. C. A. Kasdorf.

Q. Who is he?

41651 A. He is in our sales and traffic department.

Q. Well, was the damage paid,—the damages paid,—in the name of the lumber company or in your name?

A. In the name of the Hawkeye Portland Cement Company.

Q. Are you sure of that?

A. Yes.

Q. Is there anything here to show that?

A. Well, we filed the claim in our name. That is a credit memorandum.

Q. But is there anything here to show from the railroad whom the railroad regarded as having title to that cement?

Q. The question is clear to you, isn't it, Mr. Witness?

A. Well, we filed the claim in our own name.

Trial Examiner Norwood: The warrant was made, then, to you?

The Witness: And the check came to the Hawkeye Portland Cement Company.

41653 Trial Examiner Norwood: Well, just a minute, please.

41654 Now, this copy here, Respondents' Exhibit 3371-B, is the claim about the thing; is that it?

The Witness: Yes, sir.

Trial Examiner Norwood: And you say that it was afterwards allowed?

The Witness: Yes, sir.

Trial Examiner Norwood: To the Hawkeye Company?

The Witness: Yes, sir.

Trial Examiner Norwood: And the check or the payment was made direct to the Hawkeye Company?

The Witness: Yes, sir.

Trial Examiner Norwood: And then the Hawkeye Cement Company sent its credit slip, Respondents' Exhibit 3371-E, to its customer crediting the customer with the amount recovered?

The Witness: Yes, sir.

41655 (RESP. EX. 3371-A to 3371-G was offered and received in evidence.)

The witness identified Resp. Ex. 3375-A to Q as Hawkeye's complete file on notices that were picked up

41656 and sent in by various dealers covering information that various cement companies were prepaying freight charges on all shipments. These are the announcements referred to in his stipulated testimony with respect to the practice of prepayment of freight on shipments to customers.

41657 Trial Examiner Norwood: I am going to reject any evidence, though, as to prepayment of freight

during the period subsequent to the issuance of the complaint; that is, July 2, 1937.

By Mr. Seeley:

Q. Mr. Hanley, does the Hawkeye Portland Ce-
41658 ment Company allow its customers to return cloth sacks for credit?

A. Yes.

Q. Do they return them collect or prepaid?

A. Return them collect.

Q. And your company pays the freight?

A. Yes.

Q. How long has that been your practice?

A. We have been allowing freight on all sacks returned since about 1928.

Q. And did you allow it on some sack returns prior to that time, and, if so, since when?

A. About 1922 or 1923 the competition began to prepay or to allow freight charges on returned sacks in some instances, and gradually from then on for the next six or seven years it was necessary to meet it at times.

Q. And what was the practice of the Hawkeye Company in meeting it?

A. Well, at that time they always used to be prepaid, so if a customer complained about it, or we had an idea that he expected it, why, we allowed him his freight charges.

Q. Well, was your practice in that respect due to any agreement or understanding with competitors?

A. No, we were just meeting competition.

Q. Well, prior to 1923, when you say your company
41659 began to make allowances to some of its customers for freight which they had paid on sack returns, do you know whether the railroad tariffs provided for shipments of returned sacks collect?

A. They required originally that the cement sacks be prepaid.

Q. And do I understand that where your customers complained about, or requested you to, you allowed them the freight on sack returns?

A. Yes.

Q. And subsequent to that time in 1923, was there any change in the tariff provisions in regard to freight on returned sacks?

Q. Now, I just have two more questions on this subject,

Mr. Manley: You told us how long that has been the practice of your company and you have told us that in
41660 those earlier years you allowed the freight on sack returns where you had to do it and where your customers requested it in order to meet compensation.

Now, what did that mean to your company in those years in the way of expense as compared with the period since 19—I think you said 1928 or 1929—when you began to allow freight on all sack returns? Do you know?

A. (No response.)

Q. Well, was it more or less, and, if so, approximately what did it amount to, if you know?

A. Well, we are naturally paying a lot more today than we did in those years, where we were only meeting competition where we had to.

Q. Well, your stipulated testimony states that your company is considered a small company in your competitive area. Have you determined what that expense amounts for your company?

A. Oh, about $4,000 a year.

Q. Before going to a new subject, I have one further question: Has there been any change in your practice, or the practice of your company, in regard to this matter of allowing freight on sack returns to customers since this period you referred to in 1928,—you said about 1928 you began to allow it on all sack returns.

A. Yes.

Q. And has that been the case since that time?
41661 A. Yes. It is still in effect today.

Q. Has The Cement Institute had anything to do with your practice in that respect?

A. No.

Q. Mr. Manley, does the Hawkeye Portland Cement Company have a dealer at a town called Mediapolis, Iowa? Well, I will show you Commission's Exhibit 2358, and ask you if that helps you to recall.

A. Well, we quoted the Rand Lumber Company at Mediapolis.

Q. Well, does the Hawkeye Company keep any record or does it send quotations to that town from time to time?

A. Regularly; whenever we send any out we send them to that town.

41662 Q. Now, Mr. Manley, will you tell us, please, whether you recall that your company filed prices with the Code Authority during the N.R.A. period?

A. Yes, we did.

Q. And at the beginning—I am referring, Mr. Paulson, to Commission's Exhibit 408-9, 10, and to other Commission's exhibits on the same subject.

At the beginning of the Code period, Mr. Manley, what did the Hawkeye Company do with respect to filing prices with the Code Authority? Well, how did you go about it in your office?

A. Well, we sent them all the prices that we were using at all the points we were interested in in our territory.

Q. Well, specifically, do you recall filing prices for destinations in the States of Nebraska—I will name these towns: Hastings, Neligh, Albine?

41663 A. Those are towns in the eastern part of Nebraska which we figured our regular business territory.

Q. And in Minnesota, did you file prices for the towns Mankato and Ortonville?

A. Yes. Those are in southern Minnesota, so we would.

Q. Do you recall whether in the State of Iowa your company filed any prices for the destinations Sidney, Sibley, Siquornay, and Sioux City?

A. Yes. We filed for all of those points.

Q. I show you Commission's Exhibits 409-F, 409-D, and 409-B (handing the documents to the witness).

Do you note that in the columns at the top, the Hawkeye Company is listed as having filed prices at those towns that I have mentioned?

A. Yes.

Q. Looking down that list?

A. Yes.

Q. I now show you Respondents' Exhibits 3377 for identification, A to G, 3378-A to D, and 3379-A to C, and ask you, if you can, to identify those papers, Respondents' exhibits, for identification?

A. Well, these are sheets from our master quotation book that would carry prices that we furnished the Code Authority covering those States.

Q. Well, are these current records you mention,

41664 —you speak of master quotation book.

A. These are what we have regularly in the course in our office.

Q. Do those papers represent the record of market

prices which the Hawkeye Company keeps in its office for those destinations?

A. Yes.

Q. And there are several columns here with dates at the top. What do those dates represent?

A. That is the date that that price was effective.

Q. Well, you say effective. What do you mean? How do those dates listed at the head of each of those columns compare with the—or do they have any relation to the quotations which you said a while ago that you sent to those destinations?

A. We send our quotations from these sheets.

Trial Examiner Norwood: Well, do those sheets relate to the quotations shown on those tabulations?

The Witness: Yes, sir.

By Mr. Seeley:

Q. In other words, are the prices which are indicated on these, Commission's exhibits, as having been filed for your company, by your company, were these prices taken from these quotation sheets?

A. Yes, they were.

Q. And as to these dates at the head of each of 41665 these columns and the figures or prices beneath each, opposite the various destinations, will you tell us whether or not you send out quotations on each of those dates to those destinations?

A. Yes, we did.

Q. Mr. Manley, as to the other destinations on these Commission exhibits which I have shown you from which it appears that the Hawkeye Company filed prices, were the prices which you filed with the Code Authority for those other destinations other than those mentioned or listed on these master quotation sheets also taken from similar master quotation sheets, or were they not?

A. They were taken from similar master quotation sheets.

Q. Then these sheets are typical of the practice of your company in that respect?

A. Yes.

Q. I want to ask you now with respect to Respondents' Exhibit 3376-A and B, which was marked for identification a moment ago, whether that, with respect to the town of Mediapolis, Iowa, whether that also is a master quotation sheet, or is it not?

A. Yes, it is.

41666 Q. And can you tell us whether the quotation, which is Commission's Exhibit 2358, whether the price which the Hawkeye Company quoted in this quotation was taken from this master quotation sheet?

A. Yes, it was.

Examination on Voir Dire by Mr. Paulson.

Q. Did you file any other prices with the Code Authority than those you had on your master sheets?

A. Yes, we did.

Q. Where did you get those, or how did you ascertain those?

A. Well, we filed on Fort Peck, meeting the competition, already meeting filed prices.

Q. Well, did you have prices on your master sheets here for all the destinations for which you filed prices with the Code Authority other than Government jobs like that?

41667 A. Well, during that time as particular jobs came up if we wanted to try to participate in them, we had to file prices, or we would meet the competitive price that we knew was on file.

41673 By Mr. Seeley:

Q. Going on, Mr. Manley, with this subject of price filing. Did the Code Authority ever attempt to control what prices should be filed, to your knowledge?

A. No.

Q. Well, what was your understanding,—was there any qualification as to the kind of prices that you could file, or what prices you could file?

A. No.

Q. Or did you understand that there were any restrictions on the terms and conditions of sale that you could file?

A. No.

Q. Coming to a new subject, Mr. Manley: Does the Hawkeye Portland Cement Company report its production and shipments to the Bureau of Mines?

A. Yes.

Q. How long has that been the case?

A. It always has.

41674 Q. And does it report its figures, similar figures, to The Cement Institute?

A. Yes.

Q. And so far as you know, has there been any change in the forms which you used in reporting those figures since your company has been reporting them?

A. No.

Q. And in reporting those figures do you show what part of your shipments are standard cement and what part are high early strength cement?

A. To the Bureau of Mines, we do.

Q. I take it that you receive the reports of the Bureau of Mines?

A. Yes, we do.

Q. And the reports of the Institute?

A. Yes.

Q. And those statistics?

A. Yes.

Q. Is that correct?

A. Yes, we do.

Q. Now, in reporting those statistics, for what districts do you report,—or for what so-called Bureau of Mines district do you report?

A. Well, we report our shipments in all territories.

Q. Into which you ship?

41675 A. Yes, sir.

Q. Now, will you tell us what use, if any, do you make of these reports? You may start first with the Bureau of Mines, and tell us with respect to the Bureau of Mines' reports what use, if any, you make of them, and then tell us what use, if any, you make of the Institute reports, and whether, and how, if at all, do they differ,—does the use you make of those reports differ?

41677 A. The Bureau of Mines' figures that we receive cover all districts, but we really are only interested in districts 7 and 8, and that part of it that divides up the shipments into the various States is the one that is really of most interest to us because we are primarily an Iowa firm. It enables us to know how much business is coming into the State of Iowa and Minnesota and Nebraska, 41678 and we can see how, relatively speaking, that we are getting along. It also provides a chart of the United States showing all States, and, naturally, we are interested in the Middle West.

The Cement Institute reports that we receive are more in detail and analyzing district No. 7, we can deduct that part of it that covers mills located in the southern part of Missouri as well as St. Louis, the central part, and enables us to see just about what percentage of the business we really do get in Iowa compared to our direct competitors.

Q. By "direct competitors," do you mean all of the direct competitors?

A. All of the direct competitors.

Q. What do you want to know that for? What use do you make of that?

A. Well, that enables us to know just about whether we are receiving our percentage of the available business that we ought to get, on account of our sales force.

Q. And if you are not getting that, what do you do, if anything?

A. We immediately give them the information and let them know that others are outselling us.

41679 The witness identified Resp. Ex. 3380 A-D as a carbon copy of a letter written to Hawkeye's salesman, Brennan, at Sioux City, Iowa, by Mr. Condon, calling his attention to busjness for the first four months of the year. Here is a memorandum to B. A. Dill, Mankato, Minnesota, from Mr. Condon. Those papers are taken from the files of the Hawkeye Company. The witness can identify the handwriting on those papers as employees or officials of the Hawkeye Company. This is written on May 15, 1936, calling attention to a falling off of tonnage in the Minnesota territory, following receipt of infor-
41680 mation that it would accumulate covering tonnage in its territory. He further identified Resp. Ex. 3380 A-D as having been made in the regular course of business of Hawkeye. They are typical of the manner in which the company addresses its salesmen on this subject.

41682 (RESP. EX. 3380-A to 3380-D was offered and received in evidence.)

By Mr. Seeley:

Q. Mr. Manley, referring to Respondents' Exhibit 149-E, which is one of the reports of The Cement Institute, I ask you with respect to the column at the top there, does the Hawkeye Company or has it ever made any use of the figures on clinker production?

A. No.

Q. Or cement production?

A. No.

Q. Or clinker stock or cement stock?

A. No.

41683 Q. Does the Hawkeye Company subscribe to the Dodge service?

A. Yes.

Q. And how does the use which your company makes of that service differ from the use which you have described that you make of the Institute service?

A. Well, the Dodge service that we receive covers prompt information of all new projects that are being instituted in Iowa, and the progress that is being made toward date, of lettings, and so forth, and who was the successful contracter.

Q. And those Dodge figures do not give you the information which the Institute reports give you?

A. No.

Q. Is the Hawkeye plant located in the Bureau of Mines' District 7?

I am referring to Commission's Exhibit 844 D to blank.

A. District 7.

Q. Does the Hawkeye Company ship a substantial part of its product into Bureau of Mines districts other than District 7? I ask you this because, Your Honor please, the competency of one paragraph of the stipulated testimony was challenged this morning as to how much of this company's shipments are shipped generally within the State of Iowa.

41684 A. No.

41685 The witness identified Resp. Ex. 3381 as a record of Hawkeye's production from 1927 to 1937, inclusive, taken from a monthly report which Hawkeye has in its office. It was prepared under his direction and he can vouch for its accuracy. The figures which were reported to the Bureau of Mines during these years were
41686 taken from the same records.

41688 (RESP. EX. 3381 was offered and received in evidence.)

By Mr. Seeley:

Q. Mr. Manley, has the Hawkeye Portland Cement Company ever reported any figures on so-called factory value of cement to The Cement Institute?

A. No.

Q. I refer to Respondents' Exhibit 152 (Commission's exhibit).

41689 Your stipulated testimony shows that, or indicates, that the Hawkeye Portland Cement Company answered the questionnaire propounded by Professors Clark and Burns. I show you Commission's Exhibit 967-976, and ask you if you recognize that or any part of it as the answer which the Hawkeye Portland Cement Company submitted in question with that questionnaire?

A. We did not give this information.

Q. You say that this sheet does not represent your answer?

A. No.

Q. How about the rest of the sheets in that exhibit, these sheets, you might tell us—this appears to be numbered Commission's Exhibit 972-2-0. You say that 972-2-0 was not prepared by the Hawkeye Portland Cement Company?

A. Yes.

Q. Now, as to the other sheets, tell us whether you recognize those as the answers submitted by your company?

A. Well, the typewriting seems to be ours, but these extensions are not.

Q. Well, apart from the handwriting on those exhibits, you would say that so far as—

A. They were our exhibits.

Mr. Seeley: I move at this time, Your Honor, to strike or to ask—I move to strike Commission's Exhibit 972-2-0, which is a part of the exhibit which purports to be the answer of the Hawkeye Portland Cement Company to

41690 the Clark and Burns questionnaire, on the ground that it is not a part of their answer, and does not constitute any admission of the company.

Off the record. It appears to be some working sheet of the Professors, I think.

Mr. Paulson: Off the record. May we see it before Your Honor rules? We do not happen to have our copy here.

Trial Examiner Norwood: Counsel may examine it (handing document to Mr. Paulson).

Off the record.

(There was a discussion off the record.)

Trial Examiner Norwood: On the record.

I will reserve the ruling until after the lunch period.
Off the record.
(There was a discussion off the record.)
Trial Examiner Norwood: On the record.
Mr. Paulson: The motions to strike we think are unfounded for the documents appear on their face to be part of the questionnaire. The record shows that they were submitted by Counsel for Respondents pursuant to subpoena calling for production of the questionnaire. They are patently relevant and material and we think their competency has been thoroughly established by the testimony
and circumstances surrounding their introduction.
41691 Trial Examiner Norwood: Is the question of admissions the only question involved in the receipt of those exhibits?
Mr. Paulson: I think not.
Trial Examiner Norwood: There were studies on it, and I think the Clark and Burns' studies and conclusions were admitted in evidence, were they not?
Mr. Paulson: No.
Mr. Seeley: Well, that is not the point, Your Honor. This particular exhibit is admitted as the facts submitted by this company to the questionnaire. That is the issue.
Mr. Paulson: No, that is not the whole story.
Mr. Seeley: We are not talking about some report Burns may have made or some work sheets or some other calculation. That has been the whole trouble throughout this case.
Trial Examiner Norwood: Now, I have admitted that for what appears to be good and sufficient reason heretofore.
Mr. Paulson: Yes, we had it up in full at that time, and it was subpoenable because it was an Institute activity, for one thing, something which this industry cooperatively carried on. We are certainly entitled to see what cooperative action they engaged in. Here is evidence of it. Here
it is, that plus the facts that there are admissions
41692 make it clearly competent. There is no question
about it at all.
Trial Examiner Norwood: Well, I will keep that over the noon recess.
41693 In respect to the pending motion to strike part of
the Commission's exhibit, which is marked 972-20,
41694 the motion is denied.

41695 By Mr. Seeley:

Q. I show you Commission's Exhibit 1339, and ask you if that helps you to recall (handing a document to the witness).

A. Yes; we received this.

Q. Did the Hawkeye Company receive any bid in response to that invitation?

A. No, we did not bid.

41698 Trial Examiner Norwood: The objection is sustained as to paragraphs (4) and (5), as to paragraphs (45), (46), and (47).

41699 By Mr. Seeley:

Q. We were talking, Mr. Manley, about the so-called Good Friday invitation of the Procurement Division, which you hold in your hand. What is the opening date that appears on that invitation?

A. Friday, April 15th.

Q. And what was the date? Does it appear on what date the bids were to be submitted?

A. Well, they were to be sumbitted in duplicate for the opening on Friday, April 15th.

Q. Well, prior to that time did you ever—did any of the dealers of the Hawkeye Portland Cement Company discuss the Good Friday invitation with you or with any of the officials of your company?

A. (No answer.)

Q. Were you asked about it by any of your dealers?

A. Well, we had several inquiries, and our salesmen were contacted a few times, inquiring as to whether we were going to eliminate the dealers from certain business that had been furnished by them in the past.

Q. You told us that your company did not bid
41700 on this invitation. Did these conversations which you refer to with dealers have any influence—that is, did you give any consideration to the attitude of your dealers in deciding whether you would or would not bid?

A. Well, we had not been furnishing this busines other than through the dealers in the past, and not knowing of any large Government project that was in our territory at that particular time to be constructed within the next four months, we felt that any business that we might be participating in through small projects the Government was doing in Iowa, or participating in by way of a grant, that that

business should be furnished through the dealer in the future, as has been in the past.

Q. Did the Hawkeye Company have any agreement to bid or not bid on this invitation?

A. No.

Q. Let me ask you, was the Hawkeye plant in operation at the time this invitation was received?

A. No.

Q. When, if you recall, did the Hawkeye plant shut down in 1938?

A. Around January 15 to 20.

Q. And when did the plant of the Hawkeye Company resume operations in 1938, if you know?

A. Somewheres around the middle of June.

Q. Tell us any of the reasons or practice which
41701 you considered in deciding whether or not the Hawkeye Company would bid on this invitation.

A. Well, we were not operating in April, when the bid was received, and in order to prepare ourselves for any special cement that should be on hand—I mean a special amount of cement, it would have been necessary for us to commence operations earlier than we finally did, with no assurance that we would have received any of the business.

Q. I think you said that the Government worked in your territory prior to this small work. What did you mean by that?

A. (No response.)

Q. I will ask you, what business—what occasion had the Hawkeye Company had to quote to the Federal Government prior to this period, 1938?

A. The small work that I had in mind was post offices and grants for schoolhouses, and contracts like that.

Q. Well, what work, if any, had the Hawkeye Company sold direct to the Federal Government prior to this time? Go back to 1929. Go back and tell us how much business the Hawkeye Company had done with the Federal Government during that period, if any. Do you know approximately?

A. In 1933 or 1934 we sold around 600 barrels to the Agricultural Department or Conservation Commission, at Boone.

41702 A. (Continuing.) And around 2,000 to one of those departments at Ames, Iowa, in 1934.

Q. Showing you Respondents' Exhibit, for identification, 3382, can you tell us what that is?

A. Shipments to the United States Government, 1929 to 1939, inclusive.

Q. Does that serve to refresh your memory as to whether you sold any business to the Federal Government other than what you have testified to?

A. This is all.

Q. In other words, other than 1933 and 1934 you did no business with them?

A. No.

Q. Did you have any occasion to quote them other than these two small orders of 600 barrels and 2,000 barrels?

A. We bid on Fort Peck.

Q. Other than that. Are you referring now to a period during the N.R.A.?

A. That was between the time of that statement. That was the reason—

Q. Other than that, can you think of any occasion?

41703 A. We received invitations from the W.P.A., but we were furnishing that material through the dealer.

Q. How long had it been your practice to sell that type of business through your dealer, the type of business that you referred to, the invitations on W.P.A.?

A. That particular type of business we always sold through the dealer.

41706 Q. Mr. Manley, let me ask you, in view of His Honor's ruling—I want to ask you whether in deciding your policy and the policy of the Hawkeye Portland Cement Company, as to whether it would or would not bid on the Good Friday invitation, did it take into account the attitude of the dealers in question here as to what their attitude was toward manufacturers bidding on this invitation?

A. (No answer.)

Q. Did you consider whether or not you would 41707 lose or create good will with these dealers?

A. Yes.

Q. And you acted on that in not bidding?

A. Yes.

Q. Mr. Manley, subsequent to this Good Friday proposal—well, let me ask you: Has the Hawkeye Company ever shipped any cement into Colorado, Texas, or Utah?

A. No.

Q. Has the Hawkeye Company ever solicited any 41708 business in those territories?

A. No.

Q. Well, did the Hawkeye Company receive any invitation from the Procurement Division on or about May 17, 1938, for bids on cement to be used in Colorado, Texas or Utah?

I refer to Commission's Exhibits 1387 and 89.

A. I remember one following this Good Friday bid of some kind, but I do not recall the particular States that it was in. I know it was a long ways from Des Moines.

Q. Well, I might say that Commission's Exhibit, which I show you, 1389, lists the Hawkeye Portland Cement Company in the mailing list.

Assuming that your company received that invitation, as you must, did you or did you not bid; and, if not, why not?

A. We did not bid, and undoubtedly the reason was the location of the States; that is, being too far away for us to be a factor on.

Q. Has the Hawkeye Portland Cement Company ever shipped any cement or solicited any business into the State of Mississippi?

A. No.

Q. Do you recall whether your company received any invitation to bid on cement for requirements for delivery at Rolling Fork, Miss., in the year 1935?

A. I do not recall the specific instance.

Q. I show you Commission's Exhibit 1063-A to D, 41709 in which the name of your company is listed on the mailing list (handing a document to the witness).

A. (No answer.)

Q. Well, just tell us whether your company, assuming it received such an invitation, would bid in that territory, whether you had any policy one way or the other, and why?

A. We probably received it, in view of the fact that we are listed here on the mailing list, but due to its location, Rolling Fork, Miss., probably passed it to file without reading it.

Q. Now, as to these invitations to which I referred, the Good Friday and the invitation for cement in Colorado, Utah, and Texas, and the invitation for cement in

Mississippi, and any other invitations which you may have received subsequent to the complaint in this proceeding, did the Hawkeye Company consult with any other member of the cement industry concerning the invitations?

A. No.

Q. How long, Mr. Manley, has the Hawkeye Company sold its cement at destination prices?

A. It has always sold its cement at destination prices.

Q. What has been your experience as to where you have found your market for cement?

A. At destination.

Q. Is that the reason you sell at destination prices?

41710 A. Yes.

Q. Have you had any request from any of your commercial customers for prices f.o.b. mill, or do they request prices delivered?

A. They always want to know what the cement is going to cost where they are going to use it.

Q. And does that apply to your contractor-customers and State Governments as well—

A. Yes.

Q. —or does it not?

A. Yes.

The witness identified Resp. Ex. 3384-A and B as a request dated March 15, 1937, from Spencer Construction Company, Spencer, Iowa for a quotation on cement Ames, Iowa, and Hawkeye's reply dated March 18, 1937; Resp. Ex. 3385-A to C as an inquiry from the Board of Control of the State of Iowa asking for prices on cement de-

41711 livered at Amaniosa, Eldora, Fort Madison, Independence and Mt. Pleasant, Iowa. Resp. Ex. 3385-A to C is typical of the requests which Hawkeye receives from State Departments which are its customers as far as the question of destination prices or mill prices is concerned. Resp. Ex. 3384 A-B is typical of the requests which Hawkeye receives from contractor-customers. These answers cover the period since he has been with the company.

Mr. Seeley: In view of Your Honor's prior ruling, I am not going to offer these documents.

41712 Q. So far as the Hawkeye Portland Cement Company is concerned, Mr. Manley, you say you came with the company in 1916. Was Portland cement being sold at destination prices in your territory at that time?

A. Yes.

Q. Do you recall, Mr. Manley, any executive order of the President of the United States relating to the matter of quoting to the Federal Government prices 15 percent lower than what you quote your other customers?

A. I saw a circular of that.

Q. Well, for your information I will show you Commission's Exhibit 179 and ask you if that it what you have reference to (handing a document to the witness)?

A. Yes.

Q. Did the Hawkeye Company, to your knowledge, ever quote to the Government prices 15 percent below the prices that it quoted to its regular customers?

41713 A. No.

Trial Examiner Norwood: Didn't it quote any lower?

The Witness: No, sir.

By Mr. Seeley:

Q. And why not, Mr. Manley?

A. (No answer.)

Q. Well, let me ask you—

Mr. Paulson: Now, just a minute.

Before withdrawing his question—I wish he would, rather than going on whenever the witness does not answer the question.

Trial Examiner Norwood: Do you wish to withdraw it?

Mr. Seeley: I withdraw it.

I am simply trying to speed up the proceeding, expedite it.

Trial Examiner Norwood: Yes.

By Mr. Seeley:

Q. Mr. Manley, has the Hawkeye Company ever felt that the Government was entitled to any special concession in the way of price over its regular customers?

A. No.

Q. Did the Hawkeye Company ever have an agreement concerning that Executive Order as to whether it would or would not comply with it?

A. No.

41714 Q. Mr. Manley, did the Hawkeye Company ever have any agreement that it would not bid mill prices to the Federal Government?

A. No.

The witness identified Resp. Ex. 3386-A to H as a tele-

gram from the United States Engineers' office at Fort Peck, Mont., stating they were contemplating purchase of 10,000 to 50,000 barrels of cement between June 15 and July 1. They ask for a sample of Hawkeye's cement to see whether it would come up to certain specifications before Hawkeye could bid on it. Under date of June 6 they ask Hawkeye to wire quotation f. o. b. plant on cement in Silo A and on June 6 Hawkeye quoted them $1.60 per barrel cement in Silo A, f. o. b. carload lots Des Moines.

41715 *Examination on Voir Dire by Mr. Paulson.*

Q. How did you arrive at that figure of $1.60?

A. Mr. Condon answered the telegram and quoted them $1.60.

Q. But you did not have anything to do with it?

A. I did not send the telegram. I did not have authority to send a telegram at that time.

Q. You did not arrive at that price, then, at all?

A. No. I did not make that price.

Q. You do not know whether it was made by subtracting freight from previous prices that had been bid at Fort Peck, or not?

A. I would say it was not.

Q. But how do you know?

A. Because we had bid on Fort Peck before.

Q. I did not say from your previous price; I said from any price that had been bid there before.

41716 I ask again, do you know how it was arrived at?

A. I am sure no consideration was given to the freight from Des Moines to Fort Peck.

41717 Q. Well, I ask you again, do you know how this bid was arrived at?

A. If our cement suited their specifications, why, we were willing to sell them that amount of cement at $1.60 at our mill.

Trial Examiner Norwood: Was that your base price at the time? You are not a basing mill, are you?

The Witness: No, sir.

By Mr. Paulson:

Q. How did you arrive at the $1.60 figure?

Trial Examiner Norwood: You can't tell us how you arrived at it?

The Witness: No, sir.

41721 Trial Examiner Norwood: Did you get that award? Did you get a contract under that bid?

The Witness: No, sir.

41722 (RESP. EX. 3386-A to 3386-H was offered and received in evidence.)

41723 By Mr. Seeley:

Q. Mr. Manley, did the Hawkeye Portland Cement Company make any bid to the Illinois State Highway Department on or about February 20, 1933?

A. We did on several,—Illinois.

Q. Well, I show you this Commission's Exhibit 1888, and ask you if that helps you to answer my question with reference to the exhibit of February 20, 1933?

A. I see they have us listed here, but I would not know exactly unless I saw our own bid here.

Q. Well, you say unless you saw your own bid.

A. Yes.

41724 Q. Looking at Respondents' Exhibit, for identification, 3387-A to S, can you identify that booklet?

A. This is an office copy covering our bid on February 20, 1933, to the State of Illinois.

Q. Is that the bid you submitted in response to the invitation from the Illinois Highway Department, of which this Commission's Exhibit 1888 purports to be a tabulation of prices bid? Can you tell? You may compare those prices.

A. Yes, it looks like it.

Q. Mr. Manley, will you please look also at Respondents' Exhibit 3388-A to C, and tell us if you know what those papers are?

A. This is the working sheet on which all of the prices for Illinois letting on February 20, 1933, were worked up on.

Q. Well, you said, Mr. Manley, that—I think you just told me or described these papers, which you hold in your hand, as the work—what did you say it was, the work sheet which the Hawkeye Company used in preparing this bid, which is Respondents' Exhibit 3387-A to S?

41723 A. Yes.

Q. Is that the actual work sheet which was used?

A. Yes, it is.

Q. Now, I ask you to look at Commission's Exhibit 2230-A and B, and ask you if you wish to change your testimony at all? I asked you if Commission's Exhibit 2230-A and B is the work sheet which was used by the Hawkeye Company in connection with this bid, or if it was prepared by the Hawkeye Company at all?

A. I do not recognize this exhibit.

Q. I ask you, Mr. Manley, to look at Respondents' Exhibit, for identification, 3389-A to E, and ask you, if you know, what those papers are?

A. These are work sheets, giving a further analysis of our bids to the State of Illinois.

Q. What were the circumstances under which these working sheets, Respondents' Exhibit 3389-A to E,
41726 were prepared, if you know?

A. Mr. Royal requested these.

Q. And are those the papers which were prepared at the request of Mr. Royal?

A. Yes.

Q. I will ask you to state whether or not Commission's Exhibit 2230-A and B was prepared by the Hawkeye Company for Mr. Royal, or whether, as you have stated, Respondents' Exhibit 3389-A to E represents the papers prepared for Mr. Royal?

A. These are the papers.

Q. What do you mean by "these"?

A. 3389-A.

Q. Respondents' Exhibit 3389-A to E represent the papers prepared at the request of Mr. Royal and not Commission's Exhibit 2230-A and B; is that correct?

A. Yes.

Trial Examiner Norwood: Do you testify that Commission's exhibit was not given to Mr. Royal by somebody in your company?

The Witness: The carbon copies of the original one is attached thereto.

Q. Are you familiar, or were you familiar—were you, Mr. Manley, with these work sheet papers which you have

described as the papers, the actual papers, which
41727 were used in preparing the bid, as well as those
papers, Respondents' Exhibit 3389-A to E, which
were prepared at the request of Mr. Royal; do you know
of your own knowledge that those papers were prepared
as you have described?

A. Yes, sir.

Examination in Your Dire by Mr. Paulson

Q. Mr. Manley, what is this document, Commission's Exhibit 2230-A, if you know?

A. It is made up along the line with some of the information—that is representing carbon copies of that work sheet over there, the analysis of the Illinois bids.

41728 Q. How do you account for it? Was it taken from your files?

A. No.

By Mr. Paulson:

Q. Have you ever seen it before?

Mr. Seeley: Before what?

By Mr. Paulson:

Q. Is that clear, Mr. Manley?

Mr. Seeley: Before what, Your Honor?

Mr. O'Connor: I am sorry. We cannot hear Counsel.

Mr. Paulson: I am asking the witness questions; not counsel.

A. I saw this paper before.

41729 By Mr. Paulson:

Q. Where? I mean aside from the time your counsel showed it to you, have you seen it in your own files?

A. No.

41730 (RESP. EXS. 3387-A to 3387-S, 3388-A to 3388-C, and 3389-A to 3389-E were offered and received in evidence.)

Mr. Seeley: I wonder, if Your Honor please, that the record shows that the inquiries made by Mr. Paulson of the witness were referring to Commission's Exhibit 2230-A and B and not to any Respondents' exhibits.

Trial Examiner Norwood: Yes.

By Mr. Seeley:

Q. Mr. Manley, did the Hawkeye Cement Company make any bid to the Illinois Highway Department on or about March 27, 1933?

41731 Q. I was just about to show the witness Commission's Exhibit 1890, and ask if that refreshes his memory as to whether the Hawkeye Company did bid, did make a bid to the Illinois Highway Department on March 27, 1933.

A. We bid several times. I imagine we bid on March 27, 1933.

41732 Q. Showing you, Mr. Manley, Respondent's Exhibit 3390-A to V, can you tell us what that is?

A. This is the office copy of a proposal of March 27, 1933, to the State of Illinois.

Q. Is that the proposal which purports to be covered by Commission's Exhibit 1890, so far as the prices which you bid are concerned?

A. Yes.

Q. And what is this sheet here in the front of the booklet?

A. We did not bid on the whole proposal, and this is a memorandum of locations and quantity price and what our net would be.

Q. Looking again at Respondents' Exhibit, in evidence, 3387-A to S, at the prices which you say you bid on this prior letting of February 20, 1933, I ask you what these purple marks are at the various destinations?

A. Those represent the minimum nets to the Hawkeye Company.

Q. You say "minimum nets." What do you mean by "minimum"?

A. In this particular case, why, we were not bidding on anything that would net us less than 97 cents.

Q. Can you tell me whether the fact that you did not bid anything on anything—do I understand you did bid or did not bid in cases at destinations where your net was less than 97 cents?

41733 A. We naturally bid high.

Q. Did that result in uniform prices or did that result in prices which the Hawkeye Company bid at those destinations, which were higher than prices bid by its

competitors, or some of them, according to Commission's Exhibit 1888?

A. I notice here Quincy Adams County, we bid $2.07, and there were quite a few others there, $2.04.

Q. And does that apply to other destinations in this bid?

A. There are several down here that we seemed to have the same prices they do. For instance, at Mt. Carroll.

Q. I will ask the witness now whether the Hawkeye Company had any agreement or arrangement of any kind as to what prices it would bid at those destinations, or what not it would hold itself to in bidding on this proposal?

A. No.

41734 Q. Or any other proposal?

A. No.

Trial Examiner Norwood: Were you low at any place?

The Witness: I do not know, Your Honor.

Q. Mr. Manley, looking again at Respondents' Exhibit 3387-A to S, in evidence, and again at Respondents' Exhibit 3390-A to V, I will ask you what connection there is, if any, between this sheet which appears in the front of this bid and the red figures, or purple figures, which appear on your bid, on the prior proposal?

41735 A. Not having been given any consideration on the first bid of February 20, where we were bidding high, we tried to meet competition at some of the other places, what we figured would be competition, and we did not bid on all of it.

Q. You did not bid in this bid on the second proposal, March 27, you did not bid on those destinations where you had on the other two bid prices which proved to be higher than your competitors; is that correct?

A. Yes, sir.

Q. And did the Hawkeye Company receive any award in either of these proposals?

A. No.

41736 (RESP. EX. 3390-A to 3390-V was offered and received in evidence.)

BY Mr. Seeley:

Q. Mr. Manley, did the Hawkeye Company make any bid to the Iowa State Highway Commission in 1931 and 1932, in November?

A. (No response.)

Q. Well, in order not to burden your memory with the dates, I will show you Commission's Exhibit 1849-A to C.

41737 Q. I wish to show you, Mr. Manley, Commission's Exhibit 1846-A to C, and Commission's Exhibit 1849-A to C, and ask you whether after looking at those you can tell us whether you recall that the Hawkeye Company made any bid to the State of Iowa in those two years?

A. We bid on every Iowa bid that was put out.

The witness identified Resp. Ex. 3391 A-B and
41738 Resp. Ex. 3392 A-B as analyses of the Iowa bids of November 24, 1931 and August 16, 1932, showing the destination, the county basing point and the amount, prices bulk at destination, Des Moines rate, Des Moines net, freight from basing point; prices gross cloth. These were analyses of the prices Hawkeye bid on the two lettings of which Com. Ex. 1846 A to C and Com. Ex. 1849 A to C purport to be tabulations. Those analyses were prepared for and at the request of Mr. Royal.

Q. Now, I show you Commission's Exhibit 2231, and ask you if you know anything about that paper, whether it was prepared by anyone in the Hawkeye Company, or whether it came from the files of the Hawkeye Company?

A. Well, it is a rearrangement of that analysis.

Q. It is not a paper submitted by the Hawkeye Company to Mr. Royal?

41739 A. No.

Q. Now, I ask you to look at Respondents' Exhibit, for identification, 3379-A and B, which you told us this morning were master quotation sheets for the State of Iowa, and ask you whether in filling out the prices which you bid on these lettings of the State of Iowa, you used the prices contained in these master quotation sheets? In other words, did you or did you not bid your current market quotations?

A. We bid our current market quotations.

Q. And did you take them from those quotation sheets for the State of Iowa?

A. Yes.

Q. Are those the sheets the same source from which you issued quotations to your commercial customers?

A. Yes.

41740 (RESP. EXS. 3391-A, 3391-B, 3392-A, 3392-B, and 3379-A to 3379-C, were offered and received in evidence.)

Mr. Seeley: I would like the record to show Commission's Exhibit 2231 contains a docket stamp which reads "Obtained by I. D. Royal from C. D. Condon," May 22, 1933.

By Mr. Seeley:

Q. Mr. Manley, did the Hawkeye Company make any further bids on these Illinois lettings, do you know, other than those which you have testified regarding?

A. Not that I recall.

Q. Did you discontinue bidding on these lettings?

A. Is that the one we had an exchange of telegrams?

Q. Well, I think I can show you a Commission's exhibit, which may help you on that.

41741 The witness identified Resp. Ex. 3393 A to I as
41742 a telegram to Hawkeye, dated May 29, 1933, from Robert Kingery, acting director, Springfield, Illinois; and Hawkeye's reply to it; another telegram from Springfield, dated May 31st; another telegram dated May 31st from Springfield, Illinois; a memorandum in Hawkeye's office showing some minor changes in the proposal from a previous one that Hawkeye had received; a telegram from Hawkeye to Robert Kingery, Springfield, Illinois, dated May 31st, 1933; another telegram from Robert Kingery, Springfield, Illinois, dated June 1st; another telegram from Robert Kingery, Springfield, Illinois, dated June 2d and a copy of Hawkeye's letter to Robert Kingery, dated June 3rd. These papers represent Hawkeye's file of correspondence on this inquiry of the Illinois State Highway Department. Hawkeye did not receive any award or business under this proposal.

41747 Washington, D. C.,
Thursday, June 20, 1940.

41748 B. E. MANLEY thereupon resumed the stand and testified further as follows:

41752 *Direct Examination by Mr. Seeley*
(Resumed).

Q. Mr. Manley, I show you again Respondents' Exhibits, for identification, 3393-A to I, and, in particular, 3393-E and 3393-I, and ask you to tell His Honor, if you

can, what those pencil memorandums are, and what they relate to?

A. We received a telegram from Kingery, Springfield, Ill., stating they were asking for bids on Portland cement, June 5, and proposals to follow. This indicates the proposals.

Trial Examiner Norwood: Now, wait a minute.
41753 What do you know about the paper? Who made it, and what it means; don't tell us what it contains.

The Witness: If is a comparison between a proposal—

Trial Examiner Norwood: Wait a minute. Did you make it? Do you know anything about the making of the paper?

The Witness: I know who made it.

By Mr. Seeley:

Q. His Honor is asking you whose handwriting that is on there.

Trial Examiner Norwood: Whose handwriting is it?

By Mr. Seeley:

Q. And what connection he has with the company?

A. P. M. Nelson. He was chief clerk in the sales department at that time, and he was just comparing the one proposal with the other to see if the stipulations were the same—that is, the conditions of one with the proposal that we had probably filled out on March 27.

41754 Trial Examiner Norwood: The $1.10 bid was explained, as being 90 percent of the going price; isn't that right?

The Witness: Of the March 27 proposal, I believe.

Trial Examiner Norwood: Yes. That May 31 telegram, 90 percent of the going price.

Mr. Paulson: I would be happy to have the witness tell us the chain of events here.

Trial Examiner Norwood: Now, what happened after that? Did you accept that 90 percent of the going price?

The Witness: As I recall, within a short time after that telegram was received they sent another telegram saying that the original proposition was probably rejected and they were sending proposals for another letting.

Trial Examiner Norwood: Well, that is in here, too, yes, and those two proposals were sent and they with
41755 drew them before you could bid; is that right?

The Witness: As I recall, the proposals were for

lettings for June 5, and they sent a telegram on June 2, or somewhere about that time; to ask that the proposal be returned.

(RESP. EX. 3393-A to 3393-I was offered and received in evidence.)

Trial Examiner Norwood: Now, as to these others that I have studied, Respondents' Exhibit 3386-A to H, the record shows the witness—and I had overlooked that when I ruled on it, just for the time being, at least—these are introduced to show, they are offered to show, that this company made an f.o.b. mill bid and the price is given here, and the witness cannot tell us anything about how the price was arrived at, and you know there is a question about,—we have called certain bids f.o.b. mill bids, and they have been figured out by deducting freight from what the prices would be on the regular basis of figuring back to basing point. The Commission contends that that is not an f.o.b. mill price, as alleged in the complaint, and the rea-
41756 sons appear there, which would throw light on the kind of f.o.b. mill price that was charged; that is, such a price as would prevent a purchaser from taking advantage of the land-grant rates, so I do not think this is sufficiently informative unless somebody could tell us about the price, and that is information that is within the power of the Respondents to produce, and I think they should produce it.

Mr. Seeley: Your Honor, since Your Honor ruled on the offer yesterday and accepted these exhibits for the purpose for which they were offered, I did not go further into the identification, or, as Your Honor has suggested, I did not throw further light on the comparison between this bid, which the company bid, and other bids, which it made, but in view of Your Honor's observations this morning, I ask Your Honor to give me an opportunity to take up two other bids which I had intended to take up yesterday from which I am confident the witness will be able to show to Your Honor the circumstances and the difference between the bid which Your Honor holds in your hand and the two bids which I am about to take up, and if Your Honor is not satisfied at that point you may then rule, but I would like to have that opportunity.

Trial Examiner Norwood: You shall have it, yes, certainly.

41757 By Mr. Seeley:

Q. Just one question, Mr. Manley, before I comply with His Honor's request. In connection with the so-called Fort Peck bid, you said a moment ago in answer to Mr. Paulson's objection, in connection with the correspondence with the Illinois Highway Department, and the proposal to purchase cement that would net the company $1.10, you said that the wire came, a further wire came from the Illinois Highway Department, asking you to return the proposals.

My question now is, did the Hawkeye Company return those proposals to the Illinois Highway Department?

A. Yes. They returned them them promptly by letter.

Q. Now, Mr. Manley, yesterday you told us in connection with the considerations which your company gave to the invitation of the Procurement Division in 1938, you mentioned the occasions which your company had had prior thereto to quote to the Federal Government, and I think you mentioned a so-called Fort Peck requirement. Now, other than the bid which His Honor has just talked about on which the Hawkeye Company submitted an f.o.b. mill bid of $1.60, did the Hawkeye Company at any other time quote to the Federal Government for any requirements at Fort Peck?

A. You say than Fort Peck?

Q. At Fort Peck, or for delivery to Fort Peck.

41758 A. We quoted Fort Peck.

Q. When was that,—during the Code or—

A. During the Code.

Q. I show you Commission's Exhibit, in evidence, 164-J, and ask you if the Hawkeye Company received any such notice of price filing as is contained in the body of this telegram, which is Commission's Exhibit 164-J?

A. Yes.

Q. I now show you Respondents' Exhibit, for identification, 3395, and ask you if that is the notice that you have just said that you did receive?

A. Yes.

Q. And is that telegram dated the same date as Commission's Exhibit 164-J?

A. May 31.

Q. Whose handwriting is this that appears on the bottom of Respondents' Exhibit, for identification, 3395?

A. My handwriting.

41759 Q. And what do those figures represent? Just go down both columns and tell us what they are, and what was the occasion for your making those figures?

A. Just a memorandum showing the prices that are written out in the telegram, as to whether they were bulk, paper, and cloth, and what our freight from Des Moines to Wiota would be, and showing what we would realize with and without the discount, and another memorandum on the other side showing the bids that were filed May 10th.

Q. Filed where and with whom?

A. With the Code Authority on another Fort Peck letting.

Q. And you received notice of the bids that were filed in that letting, or the Hawkeye Company did?

A. Yes.

Q. I notice on this left column you have figured—you have a figure 1.3606312, and the words "freight Des Moines to Wiota." Where did you obtain that figure?

A. That information was in the invitation to bid from the Government.

Q. I now show you Commission's Exhibit 164-X, in evidence, and ask you if that is the source of the rate which you have written in your handwriting there? I will change my question: I will ask you if the figures given in Commission's Exhibit 164-X refresh your memory as to the source which you have described as the prior 41760 proposal, or as the invitation to bid on that letting?

A. Well, it looks like the same figure, and that this is multiplied by 376 pounds per barrel would give the figure that I have on the telegram.

Q. You refer to this figure in Commission's Exhibit 164-X, 36.187.

A. Yes.

Q. Per hundredweight.

A. Yes.

Q. First, I want to ask you: Did the Hawkeye Company place any bid in response to this, subsequent to the receipt of this notice of price filing, which is Respondents' Exhibit, for identification, 3395?

A. Yes, we did.

Q. And what price did the Hawkeye Company bid?

A. 2.7054 in bulk.

41761 Q. Do you recognize Respondents' Exhibit, for identification, 3396-A to C?

A. Yes.

Q. What do those papers represent?

A. This is a telegram from the Code Authority, dated October 11th.

Q. And what is the nature of that?

A. Giving us the bid filing covering Wiota, Mont., letting of October 16th.

Q. And that is a subsequent letting to the letting which you have just referred to in Respondents' Exhibit 3395?

A. Yes.

41762 Q. And what are these sheets here? Whose handwriting appears on Respondents' Exhibit, for identification, 3396-B and C?

A. My handwriting.

Q. Did the Hawkeye Company file any bid on this letting, which is covered by Respondents' Exhibit, for identification, 3396?

A. No.

Q. Why not, if you know?

A. The price had been reduced 20 cents over the previous one, and after giving consideration, why Mr. Condon told us not to bid on October 15th.

Trial Examiner Norwood: Now, what was the previous price?

The Witness: 2.7054.

Trial Examiner Norwood: $2.70, plus?

The Witness: 2.7054.

Trial Examiner Norwood: Well, was that delivered price or f. o. b.?

The Witness: Delivered price.

41764 Q. What are the pencil figures that appear, Mr. Manley, at the bottom righthand lower corner of Respondents' Exhibit, for identification, 3396-A?

A. The file price of 2.5054 and showing the freight from Des Moines to Wiota, Mont., and our gross realization, and also the same realization with the discount of 10 cents.

Q. Where did the Hawkeye Company, if you know, obtain that figure of freight, the freight which you have deducted there?

A. From the Government's invitation.

41765 Trial Examiner Norwood: Can you identify those figures there? Do you know who made those figures on Respondents' Exhibit 3395?

The Witness: I made them.

Trial Examiner Norwood: You made those figures. When did you make those?

The Witness: Undoubtedly the same day the telegram came in.

(RESP. EXS. 3395 and 3396-A to 3396-C were offered and received in evidence.)

41766 By Mr. Seeley:

Q. Mr. Manley, can you tell us whether the Hawkeye Company received any notice or communication from the Code Authority regarding prices filed with the Code Authority for requirements or letting at Casper, Wyo.? Do you recall anything of that kind?

A. I recall we received a notice of a filed price.

Q. I show you Commission's Exhibit 753-E and 753-G, which the name of the Hawkeye Portland Cement Company is located on at the masthead, and ask you if those are the notices which you referred to?

A. Yes.

Q. Did the Hawkeye Company submit any bid in response to the invitation for requirements at Casper, Wyo.?

A. No.

41767 Q. Mr. Manley, I show you now Respondents' Exhibits, for identification, 3397-A to F, ask you what those papers are, the source of them, and what subjects they relate to.

A. Memorandum made by myself and P. M. Nelson, and an invitation to bid on 20,000 barrels of cement.

Telegram from Code Authority, Chicago, dated April 21, 1934, covering file price of Casper, Wyo.

Letter from Department of Interior, Denver, Colo., April 21.

Telegram from Code Authority, Chicago, dated April 27, 1934, covering file price, Casper, Wyo.

Q. These figures at the bottom of Respondents' Exhibit, for identification, 3397-F, in the lower righthand corner, whose handwriting is that?

A. Mine.

41768 Q. You stated that this first sheet, Respondents' Exhibit, for identification, 3397-A, is a memorandum you prepared. What is this writing in the upper righthand corner?

A. I called the Northwestern Railroad and asked them the land-grant rate from Des Moines to Casper, Wyo. I called the C. B. & Q. on April 20th, and on April 21st we got a file price at Casper, Wyo. And figuring out what it would net us, why, Mr. Condon said, "Don't bid."

41770 (RESP. EX. 3397-A to 3397-F was offered and received in evidence.)

Q. I have one more paper, Mr. Manley, Respondents' Exhibit 3398, for identification. First, I will ask you, has the Hawkeye Company made—Mr. Manley, a moment ago, in identifying Respondents' Exhibit, which is now in evidence, 3397-A to F, you stated that the writing in the upper righthand corner of 3397-A indicates that you telephoned the railroad and made an inquiry concerning land-grant rates. I now ask you, has the Hawkeye Company on other occasions made inquiry of the railroads for land-grant rate information, if you know?

A. Yes, a few times we found out—tried to find out.

Q. And did you obtain the information from the railroads on occasion?

A. In that particular case you asked me about the file. We did not wait for the information.

Q. Well, not in this case, but in other cases have you obtained information?

41771 A. Yes, we have.

Q. I now show you Respondents' Exhibit, for identification, 3398, and ask you what that is.

A. Letter from the M. & St. L. Railroad, Des Moines, dated January 7, 1936, giving us some land-grant rates.

Q. Is that typical of the inquiries that you stated your company has had some occasion to make of railroads for land-grant information?

A. Yes.

Q. One further question: This writing on Respondents' Exhibit 3397-A, the word is "Winkranz." Who is "Mr. Winkranz"?

A. Commercial agent of the Northwestern Railroad, Des Moines.

41773 (RESP. EX. 338 was offered and received in evidence.)

By Mr. Seeley:

Q. Mr. Manley, I have one further question:

Has the Hawkeye Portland Cement Company ever had any agreement, to your knowledge, to use a so-called control clause?

A. No.

Q. And has the Hawkeye Company done any-
41774 thing that you know of to prevent the Government from getting an f. o. b. mill price? Well, has the Hawkeye Company ever had any agreement as to what kind of prices it would quote to the Federal Government?

A. No.

Q. Mr. Manley, do you recall whether the Hawkeye Portland Cement Company ever received any invitation from the Federal Government in 1938, from the Procurement Division of the Federal Government, to bid on requirements for delivery to the Bureau of Reclamation in Montana or for delivery to the Bureau of Reclamation at Shoshone project, Wyoming?

I am now referring to Commission's Exhibit 1341 and 1384.

A. I do not recall receiving them.

41775 Q. Well, I will ask the witness whether he recalls that the Hawkeye Company did make any changes in its prices in the month of July, 1933?

A. Yes, we did.

Q. I now show you—

Trial Examiner Norwood: Do you know what those changes were?

The Witness: Around July 1, 1933, we had a shortage made in our working hours and increased the wages of all our men, and there was evidence in the territory that the price of cement was advancing, and we took advantage of it in July, the early part of July; I just don't know what date it was.

Trial Examiner Norwood: Approximately what increase did you make? Do you remember?

The Witness: Around 25 cents.

Mr. Seeley: The witness has stated, Your Honor, that he does not recall what date he made that change. I

therefore ask to be permitted to show the witness Re-
spondents' Exhibits, in evidence, 3379-A to C, in
41776 order to determine whether the wit[illegible] can then
tell us what date the Hawkeye Company made that
change.

Trial Examiner Norwood: Those are exhibits that he had something to do with?

Mr. Seeley: Oh, yes. He testified yesterday that these were his master quotation sheets that he uses in his every-day business.

Trial Examiner Norwood: Go ahead.

(Mr. Seeley hands a paper to the witness.)

The Witness: July 10, 1933.

By Mr. Seeley:

Q. Can you state whether the Hawkeye Company issued quotations to its trade reflecting the change in price which you have described to His Honor on July 10, 1933?

A. Yes, we did.

Q. I now show you Respondents' Exhibits, for identification, 3394-A to Z-31, and ask you what those papers are.

A. Memorandum from our salesman Denigan at Waterloo, Iowa, dated July—

41777 Q. Tell the source of the papers, and what they are generally, what subjects they relate to.

A. These are memoranda from our various salesmen showing an increase in various parts of our territory, together with quotations that they picked up from miscellaneous cement companies showing an increase in all parts of Iowa and Minnesota and eastern Nebraska.

Q. Can you glance at those papers, Mr. Manley, and tell us what period is covered, from the earliest to the latest, roughly?

A. In Medusa's quotations, July 1, effective July 7.

41780 (RESP. EX. 3394-A to 3394-Z-31 was offered and received in evidence.)

By Mr. Seeley:

Q. Mr. Manley, in the case—well, I will ask you, does the Hawkeye Company allow its customers in—protect its customers in case of price changes?

A. Yes.

Q. Is that true in the case of price declines as well as in case of price advances?

A. Yes.

Trial Examiner Norwood: How do you protect them in case of price declines? You mean in case they are contract customers?

The Witness: No, Your Honor. They may have secured a car of cement three, four, or five days before the price decline, and we make it retroactive.

Trial Examiner Norwood: I see.

By Mr. Seeley:

Q. What is the purpose of the Hawkeye Company in giving its customers that protection?

A. Retaining their good will.

Q. How long has that been the practice of the Hawkeye Company?

41781 A. It has always been the practice of the Hawkeye Company.

Q. Has there been any change since you have been with the company? You might just tell us what you do, what your practice is; when you find an announcement of a competitor, and you decide to follow a price change. What do you do with respect to your own customers?

A. Our salesmen endeavor to contact as many as possible, giving the information, and protect them on any immediate business that they may have in sight, either by an order to be shipped out in 15 days or by a specific contract.

Q. I think you told His Honor that in the case of price reductions you give the customers the benefit of the new price retroactively.

A. Some cases might be different than others. We would not generally make a reduction to everybody, but if they had secured the order maybe five, six, eight days previous to it, and felt they should have a reduction, we would let them have it.

41782 Q. Mr. Manley, in selling Hawkeye cement in your sales area, have you found cement being sold at prices which are below the published quotations of the—published market quotations?

A. We figured at times that they were.

Q. Mr. Manley, has the Hawkeye Portland Cement Company sold cement at prices below its published prices?

A. In order to meet competition we have at some times,

Q. Now, you say in order to meet competition. I ask you, have you in the regular course of your business found cement being sold, or have you learned of cement being sold at prices below the published quotations of competitors?

Mr. Paulson: Now, just a minute. Unless the witness can fix the time, a specific instance, I object.

By Mr. Seeley:

Q. Prior to July 1, 1937, Mr. Manley, have you learned of cement being sold in your territory at prices be-
41783 low the published price or market quotations of competitors?

A. Yes, we have.

Trial Examiner Norwood: When was that?

The Witness: In 1937 and 1936 I recall several contracts that we were unable to get any place on, so it was necessary to give a concession to a contractor, or so.

By Mr. Seeley:

Q. Have you prior to July 1, 1937, Mr. Manley, found cement being sold, or learned of cement being sold in your territory by dealers at prices below your market prices?

A. We have known of occasional places.

Q. I show you, Mr. Manley, Respondents' Exhibit, for identification, 3400-A to O, 3401-A and B, and 3399-A to F. Will you look at those papers and tell us what they are,—tell us separately the subject matter of each of those three sets of papers, and the source of the papers.

41784 A. Here is a letter from our representative at Omaha, Nebr., giving report on letting he attended at Lincoln, Nebr., and an acknowledgement from our office of his letter.

Here is a copy of our letter to all our salesmen asking them to be on the look-out for lower prices.

Memorandum from various members in our office giving advice of information leading to lower prices.

A telegram to our representative in Omaha, Nebr., authorizing him to meet a lower price.

A file of papers where we reduced our invoice price to a number of customers who complained of having received lower quotations from our competitors.

Trial Examiner Norwood: What is the date of that last one?

The Witness: 1931. 1931 mostly.

By Mr. Seeley:

Q. What is the date of the others, Mr. Manley?

A. 1935 is the letting at Lincoln.

Q. Have there been any occasions when the Hawkeye Company lost a contractor-customer and found it was unable to sell him any more cement?

41785 A. Over a period of years there are several that we formerly sold that we do not sell now, and we concluded that they—

Trial Examiner Norwood: Wait a minute. Just state the factual matter that you found out about it instead of the conclusions.

By Mr. Seeley:

Q. What did your company do about it? You say you found that you have lost a contractor-customer.

Trial Examiner Norwood: Did you investigate those cases?

The Witness: Yes, but it was too late.

Trial Examiner Norwood: Did you find out any reason for it?

The Witness: Just that they had a better proposition from somebody else.

By Mr. Seeley:

Q. Have you in some of those cases, or have you in cases where you have learned of these prices which you stated were lower than published market prices of competitors, met such prices or endeavored to sell your cement to meet those prices?

A. You do not very often get an opportunity to meet a quotation, but you have to give a contractor a concession in order to allow him to bid on a contract.

41786 Q. Mr. Manley— I will withdraw the previous question.

Does the Hawkeye Company—you stated a moment ago that on some of these occasions the Hawkeye Company has sold cement below its published prices. Now, I want to ask you whether the amount of cement involved was substantial to your company or not?

A. Yes, they were.

Q. And have you met that kind of competition over a considerable period of time with the company?

A. Yes, we have.

41787 *Examination on Voir Dire by Mr. Paulson.*

Q. These series of papers that Mr. Seeley has asked you about, Mr. Manley, these represent all the documentary evidence you have of price cuts and price cutting activities, in your files?

A. All?

Q. Yes.

A. No.

Q. On what basis were these selected?

41788 A. The first file of papers regarding that letting at Lincoln, Nebr., shows that there was a quotation filed to the W. P. A. at a price less than the published price.

By Mr. Paulson:

Q. I asked you on what basis were these papers selected. Did you select them? Let me ask you that first.

A. We furnished them.

Q. Well, did you, personally, go to the files and extract them?

A. Not personally, but I asked them to accumulate them.

Q. You said these are not all that you had in regard to rumored—alleged price cuts. How much more do you have in your files?

41789 A. Well, our salesmen probably report almost every week some rumor or effect,—you might call it a rumor,—that somebody is getting a price below the market, but we did not bring them all in.

By Mr. Paulson:

Q. Do you make it a practice to investigate all the rumors that you hear?

A. It is usually too late.

Q. Then, you do not make it a practice of investigating all rumors?

A. No, but you have to be on the look-out for future business that might be handled that way.

Q. Did you investigate any of the instances referred to in these exhibits to find out what the factual situation was?

A. In those cases we took the dealer's word for it.

Q. But you do not know, then, whether the prices were actually cut, or not, by any competitors?

A. Well, we got that much confidence in our dealers that we do not feel as though they are taking advantage of us. To retain their good will, why, we would allow them the credit.

41791 Trial Examiner Norwood: On the record.

The objection is sustained to all three of them, Respondents' Exhibits 3399-A to F, 3400-A to O, and 3401-A and B, for the reason that no one connected with these transactions is present to give us the price thereon.

Direct Examination by Mr. Seeley (Resumed).

41792 Q. Mr. Manley, in the cases where you say that your company has sold cement at prices below its published price or market quotations, has the Hawkeye Company insisted on written information of reports of price reductions by its competitors below the published prices?

A. No.

Q. And I want to make sure whether I asked you with respect to the volume of sales of the Hawkeye Company, have these instances where you sold cement at lower prices than your published quotations affected a substantial volume of your sales?

41793 A. Taking each sale individually, we have considered them quite substantial.

41794 Q. Mr. Manley, did the Hawkeye Portland Cement Company make any shipment of cement in 1936 for any other cement company?

Mr. Paulson: Is it standard Portland you are asking about? If it is, I do not object, otherwise I object.

By Mr. Seeley:

Q. Well, I ask you, did the Hawkeye Portland Cement Company ship any of its standard product or standard Portland cement of the Hawkeye to any other company or for any other cement company in 1936?

A. Yes.

Q. I show you Commission's Exhibit 3046-B, and ask you if the figures appearing there relate to the shipments that you have just testified to?

41795 Trial Examiner Norwood: Do you know anything about the transaction that is covered by that exhibit?

The Witness: I know that we shipped it.

By Mr. Seeley:

Q. What were the circumstances? To whom was that or for whom was that cement shipped, and what were the circumstances for the shipment, Mr. Manley?

A. We shipped it for the Marquette Cement Manufacturing Company, and invoiced it to them at the regular dealer's published prices subject to regular terms of 10 cents a barrel discount.

Q. Did the Marquette Company request you to make those shipments,—request the Hawkeye Company to make those shipments for it?

A. Yes.

Q. Did the Marquette Company make any shipments for the Hawkeye Company,—shipments of standard Portland cement for the Hawkeye Company?

A. No.

Q. Did those figures which appear on Commission's exhibit, which I have referred you to, does that represent shipments which are, or any so-called trading of orders?

A. No.

Q. Did the Hawkeye Company trade any orders of cement?

A. No.

41796 Q. Did the terms at which that cement was shipped for the Marquette Company provide for any manufacturer's discount?

A. No.

Q. You mentioned discount. What were the terms on which it was shipped?

A. Our regular terms, 10 cents a barrel in 15 days.

Q. The terms you would have sold to any other commercial customer?

A. Yes.

Q. Has the Hawkeye Company any working agreement by which it furnished or received any part of the output of any other cement company?

A. No.

Trial Examiner Norwood: Did you charge your regular delivered price on that cement which you shipped for the other company?

The Witness: Yes; our regular published price.

Trial Examiner Norwood: Didn't the other manufacturer get some sort of a trade discount?

The Witness: No, Your Honor.

Trial Examiner Norwood: Reduction?
The Witness: No, Your Honor. Ten cents a barrel.
Trial Examiner Norwood: Cash discount?
The Witness: Yes, Your Honor.

By Mr. Seeley:

41797 Q. Mr. Manley, do you recall a so-called Lehigh sales plan in your sales territory? Did your company learn of any such plan or find that in its marketing territory that such a plan came to its attention?

A. Yes, I recall it.

Q. I show you Commission's Exhibit 971-33-L to 34-O and 33-B to 33-Z, and ask you if those are the plan that you referred to?

A. Yes, in our solicitation we ran into these.

Q. Did the Hawkeye Company ever follow any so-called Lehigh plan or any plan contained in those exhibits?

A. No.

41801 Q. Mr. Manley, does the Hawkeye Company, or has the Hawkeye Company had occasion to quote for the dealer, for its dealers, at times?

A. Yes.

Q. What has been the sales policy of the Hawkeye Company with respect to the so-called dealer's discount which is referred to in this Commission's exhibit?

A. At what period?

Q. Well, you may start with the period covered by these exhibits, and tell me what has been the policy since you have been with the Hawkeye Company as to whether it attempts to make any mark-up for its dealers, or what is its policy with respect to the dealer's discount?

A. Well, whenever we have an opportunity to quote for a dealer we contact him first and ascertain what mark-up he would authorize us to make for him.

Q. Has the Hawkeye Company, to your knowledge, ever, since you have been with the company, ever made any effort to dictate what the dealer's mark-up should be?

A. No.

Q. Well, what is the usual mark-up which you
41802 have found, if there is any usual mark-up, Mr. Manley, in your sales territory?

A. There does not seem to be any standard mark-up.

Q. Well, what have you found? What mark-ups have

you found in your business, day-to-day business? You say there does not seem to be any.

A. Oh, as high as 20 cents, and sometimes one cent or two cents a barrel in carloads.

Q. And has there been any set policy in that respect, as you found it, or has there not been?

A. It has always been very irregular.

Q. By irregular, do you mean it varies?

A. Varies from month to month; it seems to vary in whatever location you are in. They have a habit of having more strict competition, I guess, or more keener competition.

Q. And does it vary from time to time as well as from place to place?

A. Yes.

Q. Has the Hawkeye Company ever declined to sell to any dealers, Mr. Manley, because of its inability to render service?

41803 A. Yes, we have refused.

By Mr. Seeley:

Q. Well, do you have—specifically, have you
41804 ever had requests from dealers in Superior, Wis., for Hawkeye cement?

A. Yes, we have.

Q. What did the Hawkeye Company do, or what was its policy?

A. We were unable to give any service in Superior, Wis., and being really what we classed out of our territory, we could not see any reason for taking him on. The realization was very low, and in case the prices would go down at some future time, why, we would just cut him out altogether, so we could not figure it was worth while, even considering.

Q. Did you consider in passing upon that request whether or not you would, your salesmen, and your technical staff, could render service to that dealer?

41805 A. That is part of our regular service, and we would not be able to give that in Superior, Wis.

Q. My question was, did you consider that in deciding whether you would serve that dealer?

A. Yes.

Q. Does the Hawkeye Company have any dealer

named Shirey at Waterloo, Iowa, or any ready-mix manufacturer named Shirey?

A. Yes.

Q. Does the Hawkeye Company sell direct to
41806 that ready-mix manufacturer?

A. No.

Q. Why not?

A. He requests the invoices be sent to the various lumber dealers in Waterloo.

Q. Does he want—when Hawkeye sells or ships cement to that dealer or to that ready-mix manufacturer, does he always request that the invoices go to the same dealer?

A. No.

Q. Well, your last answer, Mr. Manley, mentioned dealers on shipments made to this ready-mix customer of yours in Waterloo. Do your invoices go to the same dealer or to different dealers?

A. They go to different dealers.

By Mr. Seeley:

Q. Do you know why this first customer—I will ask you, Are you—is the Hawkeye Company willing
41807 and ready to sell direct to this ready-mix manufacturer?

Q. Do you know why this customer asked you to invoice the dealers in Waterloo?

A. He sells them ready-mix, or, at times, they sell it for him, so it is his way of reciprocating.

Q. Does the Hawkeye Company have any ready-mix customer in Cedar Rapids, Iowa?

A. Yes.

Q. How does the Hawkeye Company sell its cement to this customer's ready-mix plant at Cedar Rapids?

A. Direct.

Q. Does the size of the town have anything to do with Hawkeye's policy as to whether it will sell di-
41808 rect or to the ready-mix plant?

A. No.

Q. Does the Hawkeye Company ship any cement to concrete products manufacturers in Twin Cities?

A. Yes.

Q. And does the Hawkeye Company sell cement direct to those concrete products manufacturers?

A. No.

Q. Why not?

A. They request that the invoices be sent direct to the dealers.

Q. And do you know why? Have they told why?

A. At Twin Cities the dealers all sell concrete blocks and the other products for the concrete products manufacturers, so this is the way of reciprocating.

Q. Now, I ask you the same question with respect to the town of Waterloo. Do you ship to concrete products manufacturers there?

A. Yes.

Q. And do you sell him direct?

A. No.

41809 Q. Well, tell us, Mr. Manley, I think you said that you do not sell the concrete products manufacturer at Waterloo direct. You do not?

A. No, we do not sell him direct.

Q. And why not?

A. Due to their working arrangements with the dealers, they request that all the cement be invoiced to the dealer.

Q. Now, I ask you one more question with respect to concrete products plants that you ship Hawkeye cement to: Do you have such customers at Cedar Rapids and Des Moines?

A. Yes.

Q. And do you sell your cement to the concrete products plants in Cedar Rapids and Des Moines direct?

A. Direct.

Q. Are you ready and willing—is the Hawkeye Company ready and willing to sell its cement direct to the other concrete products manufacturers in the Twin Cities and Waterloo if they are requested?

A. Yes.

41810 Q. I have one further question, Mr. Manley, in connection with the Lehigh plan:

You told us that your company did not follow it. Commission's Exhibit 971-33-L, 33-O, 33-G, and also 1131. Why, if you know, didn't the Hawkeye Company follow this plan?

A. From the complaints we received from our salesmen and dealers not in favor of it, and after giving it consideration, why, we decided not to follow it.

Q. I show you, Mr. Manley, Commission's Exhibits 1846 and 1849—these were discussed yesterday—and I ask you whether the Hawkeye Company, in filing its bid to the dealer, Iowa State highway department, in those two lettings, at the time it made up its bid, used any working sheets?

A. No, we did not.

Q. The prices which you entered were taken from where?

A. The master quotation book.

41812 Q. Mr. Manley, I was asking you this morning about the prices that you quoted to the Iowa State Highway Department on Commission's Exhibits 1846 and 1849, and you told us where you got those prices from. I will now ask you, what has been your experience as to your meeting the lowest prices of competitors at destination in your regular marketing area? Have you been able—or has that depended upon so-called basing points?

A. No.

41813 Q. Mr. Manley, has the Hawkeye Portland Cement Company found any of the consumers in its territory prefer one brand or another of cement, according to color or workability or finish, or for any personal reason?

A. Occasionally we hear of a color argument in Iowa.

Q. Well, as the result—or in any of those cases where you say you have heard of color being in argument, or any of these other factors I mentioned, such as workability or finish, has the Hawkeye Portland Cement Company ever been able to obtain one cent more for its product than another brand?

A. No.

Q. How many dealers, if you know, Mr. Manley, does the Hawkeye Company—is the Hawkeye Company doing business with regularly?

A. About 600.

Trial Examiner Norwood: Well, if there is a difference in service. You are just talking about services. Even in services rendered, would the product stand a little more in price, a cent more a barrel, two cents?

The Witness: No, Your Honor.

By Mr. Seeley:

41814 Q. His Honor asked you if you were able to obtain any premium in the nominal price paid by your customers as a result of services. I ask you whether you have been able to obtain business as a result of the services that you render?

A. We do obtain business on account of the services we render, at times.

Q. Has the Hawkeye Company ever sold any cement in the State of South Dakota?

A. Yes.

Q. What did its sales amount to? First, I will ask you, does your company still do business in South Dakota?

A. Occasionally.

Q. Well, do you do more or less today than you did formerly?

A. Very much less.

Q. Well, what did your total business amount to when you first began making sales in South Dakota,—or, I will say, since you have been with the company? Can you tell us what the trend has been?

A. Before the South Dakota Cement Plant was started we used to sell between twenty and twenty-five thousand barrels of cement a year in South Dakota.

Q. And did your company, or did it not, withdraw from the South Dakota market, or withdraw in part from the South Dakota market?

A. After the South Dakota Cement Plant start-
41815 ed up we continued to solicit there for about a year, and with such poor result that we discontinued soliciting in South Dakota.

Q. What do you mean by "poor result"?

A. Lack of business.

Q. And do you know the reasons?

A. Well, the South Dakota plant is a State-owned cement plant, and they have been very successful in the loyalty of the South Dakota people in using their product.

Q. And that has affected your ability to get business there?

A. Yes.

Q. Did the change in the amount of business that Hawkeye did in the State of South Dakota after the es-

tablishment of the State plant have anything to do with the level of prices in South Dakota?

A. No.

Q. Did the Hawkeye Company ever issue any quotations or establish any reduction in the so-called mill base at the South Dakota plant?

A. Not to my knowledge.

Q. Has Hawkeye ever had any agreement or arrangement, to your knowledge, with competitors to maintain any price level in the area around any cement mill?

A. No.

Q. Does the Hawkeye Company sell to railroads?

A. Yes.

41816 Q. How do you quote railroads?

A. F.o.b. their tracks.

Q. Do you sell to railroads that do not serve your plant as well as to railroads that do serve your plant?

A. Yes.

Q. I mean by that, railroads on which your plant is located; that is, to railroads other than those on which your plant—

A. Yes.

Q. Does your answer remain the same?

A. Yes.

Q. And do you make any difference as between those two types of railroads as to how you quote to them?

A. No. We sell them f.o.b. their tracks.

Q. Well, as to the railroads that serve your mill, do you sell to them in any different manner than you sell to your other customers?

A. No.

Q. Has the Hawkeye Company attempted to meet competitive prices on sales to railroads?

A. Yes.

Q. Does your company receive any advices from purchasing agents, railroad purchasing agents, as to competitors' quotations?

A. Occasionally.

41847 Q. Do you recall a so-called Compendium of Trade Terms and Marketing Methods? I refer to Commission's Exhibit 561.

A. Yes. I recall seeing this.

Q. Did the Hawkeye Company make any use of that booklet?

A. No.

Q. I want to show you, Mr. Manley, Commission's Exhibit 2232, which purports to be a quotation of the Hawkeye Company. There does not appear to be any writing on that other than the identification. Do you recognize that as the Hawkeye quotation form?

A. Yes.

Q. First, I will ask you, was there any change in the forms used by the Hawkeye Company, in particular this quotation form in its so-called specific job contract or specific work sales contract forms as a result of joining The Cement Institute?

41818 A. No.

Q. When you came with the company, Mr. Manley, did the forms used by the Hawkeye Company provide for an advance or reduction in price according to whether there was a change in freight rates?

A. Yes.

Q. Does the Hawkeye Company protect its customers by giving them the benefit of a decline in freight rates?

A. Yes, we do.

Q. I want to ask you, Mr. Manley, has there been any change in the terms of discount of the Hawkeye Company?

A. Yes.

Q. I will ask you, if you recall, what those changes were?

A. When I first came with the company it was 5 cents per barrel discount for payment of invoice in 10 days, and there was another change, it went to 10 cents per barrel in 10 days, and at the present time it is 10 cents a barrel in 15 days.

Q. How did the Hawkeye Company, if you know, come to make those changes in its terms?

A. It found that competitors were making those
41819 terms, so it was necessary to be on an equal basis with them.

Q. What do you mean by "necessary"?

A. We could not expect to give our customers, or not to our customers, better terms than any of our competitors.

Q. Or as good?

A. Or as good.

Q. Well, other than the change in the discount terms which you have described, Mr. Manley, has there been any

change in the forms used by the company since you have been with it?

A. Not in the form. There have been occasional changes in the cloth sacks.

Q. Well, what was that change about the cloth sacks?

A. Oh, at that time we were selling sacks and re-purchasing at 15 cents, and another time 25 cents a piece.

Q. Well, other than that, has there been any change in the forms that you know of?

A. Well, we used to carry that provision in the contract, that based on increase of—or decline of freight.

Mr. Paulson: Will you fix the time as you go along, Mr. Seeley, please?

The Witness: Well, that was from the time, 1916, up to the Code period, and the contract mentioned in the Code did not carry that provision, so we eliminated it.

By Mr. Seeley:

Q. Do you refer to the form suggested in Com- 41820 mission's Exhibit 557, Exhibits A; B, and C?

A. Yes.

Q. Then, do I understand that you, during the N. R. A. Code period, you changed the wording in respect to the —is that the leasing or selling of sacks; is that what you refer to?

A. I was referring to the price decline.

Q. To adopt the wording suggested in this appendix of the Code?

A. No. It eliminated it. In our contract we eliminated it.

Q. Do I understand, Mr. Manley, that other than 41821 the change which you have described, that there was no change in your forms since you have been with the company—that is, between the time you came, the form you were using when you came with the company, and the Code period, and the change which you have described, there were no other changes, or were there changes?

A. We had in our contract previously that we would sell and re-purchase cement sacks, and we changed that about 1935 to leasing the sacks to the customer.

Q. What does the Hawkeye Company use for freight rate information, Mr. Manley?

A. The freight tariffs.

Q. Does the Hawkeye Company make up any compilations of freight rates?

A. Yes. We arrange them alphabetically and include the rates from various competitors, and call it our freight rate book.

Q. How long has it been the practice of the Hawkeye Company to make up compilations of freight rates?

A. It has always been the practice of the company.

Q. Has the Hawkeye Company received freight books from The Cement Institute?

A. Yes.

Q. What use, if any, has the Hawkeye Company made of the Institute freight rate books?

41822 A. We receive the books and at some times in the past we have, after making up our freight rate books, we have just used it as another source of checking the human element that enters into transposing figures with the possibility that some of our original figures may have been taken wrong from the tariffs.

Q. Well, I will ask you: Has the Hawkeye Company ever used The Cement Institute freight rate books as authority for any freight rate?

A. No.

Q. Did the Hawkeye Company receive the freight rate books of the Institute as part of its membership, or did it subscribe to them separately?

A. As part of our membership.

The witness identified Resp. Exs. 3403 A-C and
41823 3404 as a letter from The Cement Institute, dated February 4th; a letter from Hawkeye to The Cement Institute, dated February 1, 1932; and a letter from The Cement Institute, dated February 4, 1932; and a copy of Hawkeye's letter to the manager of The Cement Institute, dated May 22, 1933.

41823 (RESP. EX. 3403-A to 3403-C was offered and received in evidence.)

By Mr. Seeley:

Q. Mr. Manley, where change in the tariff rates occurs, when does Hawkeye Company adopt the new rate?

A. When they are effective.

Q. For what States has the Hawkeye Company made up its own compilations of freight rates?

A. Iowa, Southern Minnesota, Eastern Nebraska.

Q. Do they cover the entire territory, regular sales marketing territory of your company?

41824 A. (No answer.)

Q. Do you have your own freight rate information for your territory?

A. Yes, we do.

Q. Do your compilations of freight rates contain rates from shipping mills that are situated—that ship into your territory from outside?

A. Yes.

Q. Do you include in your compilations freight rates from so-called basing mills or from non-basing mills?

A. From all mills that really are competitive in our territory.

Q. Does it make any difference whether they are basing mills on non-basing mills?

A. No.

Q. Does the Hawkeye Company make use of any conversion table, so-called, in connection with this freight rate compilation?

A. We have a sheet of our own that works to the same purpose.

Q. Well, have you ever used any conversion table prepared by The Cement Institute or by anybody outside of your company that has been described in this record?

A. No.

Q. Mr. Manley, do you have in your office any record of routing?

I will ask you, first, where does the Hawkeye Com-
41825 pany obtain its information in regard to routing?

A. Out of the tariff.

Q. Do you go to the tariff on each occasion, or do you have a record of it in your office?

A. We have it arranged alphabetically by destinations.

Q. When did you make that record up?

A. A good many years ago.

Q. Keep it up to date?

A. Yes.

Q. How often does the Hawkeye Company have occasion to make changes in that routing book?

A. (No answer.)

Q. I will ask you, is it often or seldom?

A. Seldom.

Q. What has been your experience in making shipments? Have you found that the railroad agents check the bill of lading?

A. Yes.

Q. In connection with the routing of your cement shipments, do you give consideration to service that you render to the customer?

A. Chiefly service.

Q. You say chiefly. Do you give consideration to I will ask you, first, do any of your customers request certain routing?

A. Yes.

41826 Q. Do you receive suplements to the tariffs from day to day?

A. Not day to day, but whenever they are issued.

Q. When these supplements are received by your company, do you make the change—when do you make the change in your compilation of freight rates?

A. We would not make a change of our record until the supplement was effective.

Q. Have you ever given any consideration as to whether or not correction sheefs, so-called correction sheets, are issued by The Cement Institute?

A. No.

41829 Q. Mr. Manley, as to these Respondents' Exhibits 3405 and 3406-A and B, for identification, I ask you to tell us what they are, if you know?

A. This is a page from our Iowa freight rate book and a page of our master quotation sheets.

Q. Do those pages show whether or not your company carried any rate from Kansas City to Winthrop, Iowa?

Q. Prior to July 1, 1937.

A. Yes. We show a rate 16 cents, but we list the caption as Sugar Creek; that is Kansas City.

By Mr. Seeley:

Q. And does the sheet, Respondents' Exhibit 3406-A, contain your record of prices covering that destination?

A. Yes, over a period of years.

41830 Q. Can you tell by looking at those sheets whether there was any change in the rate which you carried between Sugar Creek and Winthrop, between 1932 and 1935?

A. No, there was no change.

41835 Q. Mr. Manley, I show you Respondents' Exhibit 3405, for identification, and 3406-A and B, and I ask you whether the Hawkeye Company made any change in the rate it carried from Kansas City to Winthrop, Iowa, during the period of October 1, 1933, to March 19, 1935?

A. No.

Q. Has the Hawkeye Company ever made any change in its freight rates as a result of correction sheets of The Cement Institute?

A. No.

41836 Q. Mr. Manley, has the Hawkeye Company ever considered that The Cement Institute freight rate books were to be used as instruments of price maintenance?

A. No.

Q. Did the Institute, to your knowledge, ever give out any instructions to the Hawkeye Company or to any other cement company that the rates in the Institute books were to be used, right or wrong?

A. No.

Q. Mr. Manley, what part of the sales of the Hawkeye Portland Cement Company are made to contractors on the average; that is, what part of your total sales? Do you know?

A. About 50 percent. Not to contractors.

Q. On contract business.

A. About 50 percent.

41837 Q. As to the amount of your business, Mr. Manley, which has been affected by these prices you give, which were lower than your published or quoted prices, I want to ask you first what has that amounted to, on the average, since you have been with the company, of the total business? What part of your total sales has that amounted to?

Do you understand my question?

A. (No answer.)

Q. The tonnage which has been affected by these special prices which you have given has affected what part of your total business, on the average?

A. For a long period of time.

A. Yes.

A. Around three or four percent.

Q. Now, I ask you whether there have been years when the amount of tonnage affected by these special prices that you have given was more than three or four percent.

A. Yes.

41838 Q. How much more has it been?

A. In the years when there was a lot of paving going on, it was around 10 percent.

Mr. Paulson: Fix the time, Mr. Seeley.

By Mr. Seeley:

Q. Are you speaking now of the period prior to July 1, 1937?

A. Yes.

Mr. Paulson: Fix the time, please.

By Mr. Seeley:

Q. And are you speaking—are these years that you are speaking of, have they been years between 1933 and 1937?

A. Yes.

41839 Q. Mr. Manley, showing you again Respondents' Exhibits, for identification, 3405 and 3406-A and B, will you look at this price record of the Hawkeye Portland Cement Company, and tell me whether that refreshes your memory as to whether the Hawkeye Company had any published quotation at the town of Winthrop, Iowa, as of March 19, 1935?

A. Yes, we did.

Q. And as of April 25, 1935?

A. Yes, we did.

Q. And can you tell me just briefly—I will ask you one question: Did the Hawkeye Company have published quotations at the town of Winthrop, Iowa, at all of the times covered by these dates running from 1932 to 1937?

A. Yes.

Q. And how many different changes or re-issues of these quotations were there during that period?

A. To '37?

Q. Yes.

41840 A. There were ten that I know of, but we may have sent them out at various times when there was no change in price; just a matter of having our quotations before the public, so we may have sent them out more times than that.

Q. But you can state that the Hawkeye Company did have published quotations at that town on February 5, 1935, and on March 22, 1935?

A. Yes.

Q. And one more question: Were these quotations based on the prices, or did they correspond with the prices shown on Respondents' Exhibit 3406-A?

A. They corresponded with prices on 3406-A.

Cross-examination by Mr. Paulson.

Q. Mr. Manley, do I understand your testimony that you gave just before the recess that about 3 percent of your business is sold on a price basis? Is my understanding correct?

A. Did you say on what kind of a basis?

Q. Price basis.

Trial Examiner Norwood: Do you understand the question?

The Witness: You meant on a price below the published market price?

By Mr. Paulson:

4184 Q. On a price basis. I want to know if my understanding is correct.

Trial Examiner Norwood: Did you testify to that?

The Witness: I did not testify that I know of to a question like that.

By Mr. Paulson:

Q. Is it true that some 3 percent of your business is sold where there is bargaining over the price? That is your testimony, isn't it?

A. That we felt we were meeting competition below the published market price.

Q. Well, it is true, isn't it, that only 3 percent of your business is sold where there is bargaining about the price?

A. No, I wouldn't understand it that way. I figure there is bargaining about every price that we sell at.

Q. What is the difference between this 3 percent and the 97 percent?

A. We have to—

Mr. Seeley: Your Honor, I do not know of any statement in the record about 97 percent and 3 percent.

Trial Examiner Norwood: He may answer the present question.

Mr. Paulson: A hundred percent less three percent leaves ninety-seven percent, doesn't it?

Trial Examiner Norwood: Go ahead.

4185 A. We have to meet competition on all of our business.

By Mr. Paulson:

Q. Then, there is no difference between sales to contractors and sales to dealers, any other sales that you make; is that correct?

A. We are meeting competition as we find it.

Q. It is all the same proposition, all the way through your sales?

A. All on a competitive basis.

Q. And this 3 percent, you change your testimony with regard to that? There is no such animal?

Mr. Seeley: Your Honor, may we know what the 3 percent Mr. Paulson—what he refers to by the 3 percent? Three percent of what?

Mr. Paulson: Well, I will tell you, Mr. Seeley, the witness just before recess, I believe, just before lunch, was asked how much—

Trial Examiner Norwood: I think that he said that 3 percent of his contract was sold under his announced prices in order to meet what he thought was price cuts by his competitors.

Now, is that right?

Mr. Brick: Three percent of his total business, Judge.

Mr. Seeley: He said this afternoon three or four 11543 percent of his business was affected by price cuts he made, and some years ten percent or over.

Trial Examiner Norwood: What did you mean by that, that your business was reduced three or four percent, or that three or four percent of this volume was sold at these reduced prices?

The Witness: That three or four percent was sold at a lower price than the published price.

Trial Examiner Norwood: What is three or four percent of the total, or just your contract business?

The Witness: Of the contract.

Trial Examiner Norwood: Yes. Go ahead.

By Mr. Paulson:

Q. Well, how was this price arrived at, that you made on this 3 percent of your business?

A. In no particular way; just in order to try to get the business.

Q. Well, how was the price arrived at in the 97 percent of your business?

A. Meeting the price that we find in the field at the various points of our territory.

Q. Well, will you make that difference a little plainer in those two situations?

Mr. Seeley: I submit that that is not a question.

By Mr. Paulson:

41844 Q. Do I understand in the case of the three percent you bargain about the price with the prospective buyer; is that correct?

A. Oh, in some cases we let him have it in order to bid on a contract.

Q. That is, you really don't know in some instances what your competitors are offering their cement for, so you guess at it, and listen to the prospective buyer and finally come to an acceptable term; is that right,—in the case of the three percent?

A. We really don't know what he has an opportunity to purchase.

Trial Examiner Norwood: Now, give him a direct answer to that.

Is that correct, about that?

Read the question.

(Question read.)

Trial Examiner Norwood: Just answer, does that state it correctly?

The Witness: Well, Your Honor, we do not know what he has in the first place.

Trial Examiner Norwood: He has stated the situation correctly?

The Witness: And we very frequently—

Trial Examiner Norwood: Does that state the
41845 situation correctly?

The Witness: I do not understand it.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Is that a correct statement, or not?

The Witness: In most cases.

By Mr. Paulson:

Q. Now, do you prefer to do business the way you do it on the 3 percent of your sales or the way you do it on the 97 percent of your sales?

A. We prefer to get as much for our cement as we possibly can.

Q. Well, that does not exactly answer my question.

Well, do you prefer, in other words, to bargain with your prospective buyers about the price at which you will sell, or do you prefer to have a known figure, which is established?

Mr. Seeley: There is no testimony by this witness to the last statement by Mr. Paulson, I submit.

Trial Examiner Norwood: The objection is overruled, if it is an objection.

A. We have no preference in the matter. We are selling cement, so we have to do it the way we can.

By Mr. Paulson:

Q. Well, have you any preference in it from a selling standpoint?

41846 A. We have to go through every possible movement in order to make a sale.

Q. Well, that is the practical working out of it. I say, do you have any preference? Do you favor the bargaining proposition, which is reflected in 3 percent of your business, or in the method of pricing which you use in the 97 percent of the cases?

41847 Trial Examiner Norwood: Did you say you had no preference?

The Witness: I said we had no preference because we were trying to sell the cement, and had to do it that way.

By Mr. Paulson:

Q. Ninety-seven percent of your sales are made

41848 at prices which do not vary frequently; isn't that true, Mr. Manley?

A. Not 97 percent; sometimes not that much.

Q. The greater part of your sales are at prices which have not changed for some period of time; isn't that true?

A. Yes.

Q. But in the case of the 3 percent of your sales, as I understand it, you do not know what price you are going to get until the sale is consummated; that is true, is it?

A. Yes.

Q. Now, which type of situation, or which situation would you prefer of those two? You would naturally prefer the more inflexible situation, wouldn't you?

A. Well, from my experience here, we found it impossible to come to that point where we could have everything we want, and I really do not believe that we have any control over it.

Q. You have not come to the point where you cannot want or have preference. You can at least do that, you can at least want them.

I am asking you what you want. What is your personal wish in the matter?

A. Well, we seem to be unable to secure the busi-
41849 ness all-in the way you indicate.

Trial Examiner Norwood: Now, he asked you your preference in the matter as between these two classes of business. You either prefer it or you do not prefer it, or you have no preference. I think you may say that.

The Witness: Well, we would prefere to secure the business at the higher price.

By Mr. Paulson:

Q. At the published price? At the inflexible published price; isn't that correct?

A. At our price.

Q. Now, what has been your experience in connection with this 3 percent of bargaining,—3 percent of sales where you have had to resort to bargaining with prospective purchasers. Have you found that your sales were made at prices below or above your current published prices?

A. They were below.

Q. In other words, bargaining tends to reduce prices; is that your experience?

A. Well, we would not have to take the business but in order to get it, why, we just have to meet that.

Q. Well, has it been your experience that bargaining has tended to reduce or to enhance prices?

A. Yes.

Q. It tends to reduce, do you say?

41850 A. Yes.

Q. About how much below current published prices do these 3 percent sales average,—3 percent of your sales average?

A. Ten to fifteen cents.

Q. A barrel?

A. Yes.

Q. And what has been the deepest reduction you have had to take, the greatest reduction you have had to take?

Mr. Werle: May we have the time fixed, please?

By Mr. Paulson:

Q. Yes. I am going to fix it.

A. I do not recall the deepest one we have had to take.

Q. Well, can you recall the deepest one between 1935 and 1937?

A. About 15 cents.

Q. Have you ever taken a reduction of as much as 20 cents in that time?

A. Not to my knowledge.

Q. You are not sure whether you have or have not?

A. No.

Q. In your experience do you have any reductions—do you know of any reduction of as much as 30 cents a barrel?

A. Not to my knowledge.

Q. Would you have knowledge of such reduction if one had been made by your company?

41851 A. In our company in recent years I would have.

Q. By recent years, what do you mean, do you mean what—

A. Oh, those years you mentioned, 1935, 1936, 1937.

Q. Now, can you cite us some instances where your company has granted price concessions to purchasers of cement? Name the parties, the times, identify the transaction for us.

A. Carlson Construction Company.

Q. When was that? Where is that company?

A. They are located at Marshalltown, Iowa.

Q. And when did you sell them cement at reduced prices?

A. In 1937.

Q. Any other?

A. The same company in 1936.

Q. Are they contractors,—this company?

A. Yes.

Q. Road contractors, and so on?

A. Yes.

Q. Can you think of any other purchasers to whom you granted concessions from your published prices?

A. Tony Amodio at Des Moines.

Q. What year was that?

A. 1936.

Q. What was the quantity of cement?

A. I really do not recall.

Q. What was the price reduction?

41852 A. I do not know exactly, but I imagine around 10 cents.

Q. About 10 cents, you say?

A. I imagine about 10 cents.

Q. Can you cite any other instances?

A. (No response.)

Q. Well, can you cite any instances where you have made reductions from published prices to dealers other than contractors?

A. No.

Q. Or any other purchasers?

A. No.

Q. Did you say that Mr. Crofoot of Omaha, is a part owner of your company?

A. He is a stockholder.

Q. I believe you said he was not a stockholder in any other cement company. Are you sure he is not a stockholder in the Louisville Cement Company?

A. Not to my knowledge.

Q. How about the Ashe Grove Cement Company?

A. Not to my knowledge.

Q. Well, how was it that you were able to state positively that he was not a stockholder on direct, or didn't you mean to state positively—do you mean to testify solely on your knowledge?

A. Well, he has never mentioned it to me. I never considered that he was a stockholder of it.

Q. You never investigated it?

A. I never investigated it.

Q. That is true of the rest of the officers of your company, you never investigated it?

A. Yes.

Q. You really do not know for sure that they do not own stock or are not stockholders in some other company; isn't that true?

A. No, I never asked them whether they have any stock in any other cement company.

Q. Now, early in your examination, direct examination, you said that you had adopted the stamp on the bills of lading because your competitors had done so; isn't that true,—that is my recollection?

A. Yes, we knew they were doing it.

Q. So you did it?

A. We had occasion to be talking to the railroad company and we mentioned to them about sending a car down south of Des Moines to another place, and we did not want to make any issue of it or anything like that because we

did not want to antagonize the dealer, and the traveling freight agent said, "Why don't you put a stamp on it like the other companies do?"

Q. Who said that?

A. The traveling freight agent of the Rock Is-
41854 land Railroad, just in our conversation with him.

We knew others had been doing it, so we adopted that policy.

Q. What interest was it of the traveling agent of the Rock Island Railroad?

A. They are very solicitous of all people that are doing business on their railroad.

Q. Well, you would have had a competitive advantage if you let that off, would you not?

A. We do not consider it an advantage.

Q. Well, that is a restriction, a limitation upon a sale, isn't it?

A. Well, when we sell a man a carload of cement at a certain destination, we figure that it is going to that destination.

Q. Do you make a practice of keeping in line with what your competitors are doing on trade policies?

A. When it is to our advantage, we do.

Q. Well, this time in connection with the stamp on the bill of lading you adopted the practice which was restrictive. Do you make a practice of following competitors, even though it destroys the competition, the competitive advantage that you might have?

A. Well, I do not feel as though it destroyed a competitive advantage. I feel that it was to our own advantage to control delivery of the cement.

Q. Why?

41855 A. On account of diverting it to possibly cut-rate dealers, and so forth, who are doing business in the territory where our own customers were doing business.

Q. Well, is it to your advantage to see that cement is resold at prices with some stability to them?

A. In looking forward to future orders, why, we have to take that into consideration.

Q. Is that one of the reasons that you adopted the bill of lading stamp, was it not?

A. To protect our own interests.

Q. In other words, it is to the interest of a cement manu-

facturer, is it not, that cement is not given away by dealers—that is to the advantage of the cement manufacturer, isn't it? The tendency would be if the dealers gave it away or carried out a competitive war the tendency would be to break down the prices to you, wouldn't it?

A. No, we—

Mr. Seeley: I object, Your Honor. How many questions are contained in the last statement of counsel.

Trial Examiner Norwood: The objection is overruled. I think he can answer that.

A. We cannot expect to sell any cement in any given market if there is somebody coming in and undercutting our other competitors—I mean our dealers. Now, it is true we have no control over the sale of that cement, but
41856 that customer of ours has control of where he places his orders in the future.

By Mr. Paulson:

Q. Did you personally—that is, your company—have any experience with diversions of shipments in transit, or did you just profit by what you had learned of the experience of other companies?

A. We did have a car of cement that we shipped to Omaha, Nebr., turn up at another point.

Q. That was just one instance in your experience?

A. Well, that is the one I had in mind when you brought it to my memory.

Q. Was that after or before you put on your diversion stamp?

A. That was before.

Q. How long before?

A. Probably in 1935, or some time like that.

Q. Do you recall any other experience that you had?

A. Well, this other one time at Des Moines that I mentioned earlier in my testimony. The dealer was diverting it from one town to another, and if the practice was to be continued on, why, where would it stop, so we put the diversion stamp on to stop any future difficulty that we might run into.

Q. Did you on any occasion along about 1935, when this diversion stamp was coming into use, hear it discussed in trade circles outside of the time when this railroad agent mentioned it to you?

41857 A. No, we really did not notice until bills of

lading that we were getting in on masonry cement, and one thing and another, carried it. We noticed that other people in other parts of the country were doing it, so we would.

Q. What gave you to understand that it had any validity?

A. Had any advantage?

Q. Had any validity to it, any force to it? What gave you to understand that it had any legal effect?

A. At the time we started we asked the railroad agents whether they would comply with our request, and they told us yes.

By Mr. Paulson:

Q. That is the only information you had about it?

A. Yes.

Q. Do you recall the exhibits that Mr. Seeley offered showing that you had collected a claim for damage sustained by one of your customers? Do you recall those exhibits?

A. Yes.

Q. Now, I noticed in looking at this—at least it appeared to me that the railroad paid that claim to the
41858 holder of the bill of lading. Do you know whether that is the practice of the railroad? The holder of the original bill of lading.

A. No, I do not know what the practice of the railroad is, and all I can say is that all the claims we filed the railroad company pays us direct.

Q. You always submit the original bill of lading, do you not?

A. We submit the proper papers, the bill of lading, and the paid freight bill, and a copy of the invoice.

Q. You do not know whether they paid to the holder of the bill of lading, then, or to the consignor of the cement, do you?

A. They paid to us.

Q. Well, as the holder of the bill of lading, or as the consignor of the cement? Do you know?

41859 A. I do not know what the Northwestern Railroad had in mind when they paid us, on what basis, but the fact is that they paid us for the claim as we presented it.

Trial Examiner Norwood: Well, when you put in the

claim did the customer send you the original bills of lading for you to use in making the claim?

The Witness: The real original bill of lading was on file at the Northwestern Railroad.

By Mr. Paulson:

Q. The exhibits show that the customer had sent the original bill of lading to you; isn't that true, Mr. Manley?

Trial Examiner Norwood: Did you use the original bill of lading in making that claim?

The Witness: No; we used the copy.

41860 By Mr. Paulson:

Q. This is what led me to that conclusion, Mr. Manley: On Respondents' Exhibit 3371-B, which appears to be a standard form for presentation of loss and damage claims by your company, approved by the Interstate Commerce Commission, and so forth, there appears this:

"When for any reason it is impossible for claimant to produce original bill of lading, or paid freight bill claimant should indemnify carrier or carriers against duplicate claim supported by original documents."

That is what led me to ask you that question.

Now, does it change your testimony?

A. No. The railroad company keeps the original bills of lading, and I really believe that when this claim was filed that a copy of the original bill of lading was attached to it, which we had on file in the office.

By Mr. Paulson:

Q. You are not sure just exactly what did take place, then?

A. I will say it is clear.

41861 Q. Which system of selling do you prefer, f.o.b. mill or f.o.b. destination?

A. F.o.b. destination.

Q. Have you in any of your experience with the Hawkeye Company ever received a request for prices f.o.b. mill?

A. Yes.

Q. Is one of the reasons that you prefer f.o.b. destination selling the fact that customers ask or desire to know what the delivered cost would be or is?

A. Yes.

Q. Well, if you had an f.o.b. mill price, would it be dif-

ficult for you to advise your customers what the delivered cost at their location would be by rail?

A. No, it would not be difficult.

41862 Q. The mechanics of advising customers what the destination cost would be, where you are selling on an f.o.b. mill price, would be easily handled?

A. Yes.

By Mr. Paulson:

Q. So from that standpoint, that is, the standpoint of favoring customers with that service, telling them what the destination cost would be, f.o.b. destination selling is not at all necessary; is that true?

A. That is what they ask for.

Q. Yes, but you could give them the destination cost even though you were selling f.o.b. mill without great trouble?

A. When a contractor is doing a job he writes in and asks for the price at destination.

41863 Q. What other reasons do you have in mind for selling at f. o. b. destination prices?

First, I will ask you, you do sell almost exclusively at destination prices—quote?

A. Yes, we do.

Q. Now, the other question.

Mr. Paulson: Read it, please.

A. In our general solicitation of business we find the competition is really at the point of consumption, and that is really what we are after.

Q. Well, is it necessary for you to know what your competitors are quoting in order for you to arrive at a price for your cement? Is that what I am to understand?

A. We find that we cannot sell any business at any higher price than they are quoting.

Q. Can't you start with the cost plus basis and make a price, f. o. b. mill price?

A. We want to meet competition.

Q. Why do you want to meet competition? Is there some virtue in that for you? Why don't you make it and let them meet you.

41864 A. That would only be for about an hour.

Q. Let me ask you, is it easy to ascertain what your competition is quoting for their cement at the present time?

A. Yes.

Q. Why is that? Explain it, if you can.

A. Well, in our particular case we have a man living in about every advantageous point in the State of Iowa, Southern Minnesota, and Nebraska.

Q. You need not go into too much detail. I understand that your competitors used—

Mr. Seeley: I object to the witness being cut off.

41865 By Mr. Paulson:

Q. Do you very often find a quotation in the field that you cannot trace back to a base point?

A. No.

Q. How many base points, so to speak, govern your territory?

A. Steelton, Mason City, Dixon, LaSalle, Hannibal, Sugar Creek, and Louisville.

Q. Is there one at Des Moines?

A. No.

Q. Your mill is at Des Moines, isn't it?

A. Yes.

Q. Why don't you have one there?

A. The company has always met competition where they found it.

Q. You have never made competition?

A. No.

Q. Is there any other mill at Des Moines?

A. At West Moines.

Q. Does West Moines have a basing point?

A. Not to my knowledge.

Q. Well, what is your mill net on sales in Des Moines?

41866 A. It varies.

By Mr. Paulson:

Q. How?

A. Depending on where we deliver the car.

41867 Q. Well, within the switching limits of Des Moines.

A. It varies.

Q. What is it at one particular place?

Mr. Werle: May we have the time fixed, please? Counsel will ask Your Honor if you will ask Counsel to fix the time.

Trial Examiner Norwood: Read the statement.

(The statement was read.)

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Paulson: He has already told us what it is at the present time, but under Your Honor's ruling I will ask for it now as to prior to the issuance of the complaint; that is, prior to July 1, 1937.

Trial Examiner Norwood: Yes.

A. Between—this is a little approximate, but they are pretty close—$1.90 and $2.01.

By Mr. Paulson:

Q. How is the price currently quoted at Des Moines made up? Upon what point is it based?

A. Currently on Hannibal, Sugar Creek.

Q. Do you recall how it was made up in 1937; that is, on what it was based?

A. Well, it may have been made on Mason City.

Q. Does Mason City still have a base?

A. Yes.

41868 Q. Have you any idea what volume of cement is consumed in Des Moines and in a 50-mile radius of Des Moines?

A. No, I have not.

Q. You have never made a study of that?

A. No. I have no way of getting the figures.

Q. What is the lowest mill net that you received in 1937?

41871 A. I believe around $1.45 on a small percentage of our business.

By Mr. Paulson:

Q. So that your range, wasn't it between $1.45 and $2.01 or $2.02 in 1937? I want to find out in a little more detail about your method of quoting prices, Mr. Manley. As I understand it, you use a base point, and add the freight, and quote the sum; is that correct?

A. We find the prices that are being quoted in a given territory, and after a good check-up of that territory we feel that we have the—

Q. You figure back and get the base against some constant point, and then add the freight rate and the sum

of the base and the freight becomes your published price; is that true?

A. In most cases.

Q. Well, let me ask you this: Do you find that the prices which you quote are identical with those of your competitors at all points in the territory in which you sell?

A. We try to be.

Q. Well, do you find—in other words, is it your experience that using the method that you do in quoting prices results in your quoted prices being identical
41872 with all prices quoted by your competitors?

A. Yes.

Q. You said the Fort Peck price that your company bid was $1.60 f. o. b. mill. Do you recall that?

A. Yes.

Q. And in the course of that examination you said that you know it was, that that $1.60 figure was not determined by subtracting the freight from the destination cost at Fort Peck. How did you know that?

A. On account of my office being right next to Mr. Condon's, and knowing when the transaction was going on.

Q. Well, that would not make it clear to us, don't you see? What else?

A. Well, that seemed to be a special invitation. It was all handled by wire, and Mr. Condon endeavored to find out if we had the cement on hand that would pass the proper chemical analysis as requested in the original telegram, and after sending them a sample of it they wired back for quotations, and he really figured he had kind of an inside track and had some chance of finally getting some business on Fort Peck.

Q. How did he happen to think that he had a chance to get it at $1.60, is what I want to know.

A. Because they seemed to be interested in giving us a chance this time.

Q. Well, they did not set the $1.60.

41873 A. No, but then—

Q. Well, why not $1.55, why not $1.65, why the $1.60?

A. Well, of course, it was below our average net at the time and realizing that the bids at Fort Peck a year

or so ago were a certain figure, and conditions were changing a little bit, he figured he could get $1.60 for it.

Q. Do you know whether any other quotations which would have resulted in identical destination costs were made by your competitors?

A. No. We thought it was a private inquiry.

By Mr. Paulson:

Q. It was a special job of cement that was wanted, was it not?

A. Well, it was a special.

Q. Was it a private inquiry, do you know?

A. We never heard. We just got a "thank you" telegram for sending a quotation.

Q. You do not know to this day whether it was a private inquiry?

A. We never heard.

41875

Washington, D. C.
Friday, June 21, 1940

41876 B. E. MANLEY thereupon resumed the stand and testified further as follows:

Cross-Examination (Resumed) by Mr. Paulson.

Q. I want to get the picture a little clearer about the price quotations around Des Moines.

You told us yesterday that the prices in Des Moines were based on Hannibal and Sugar Creek; is that correct?

A. We find the prices being quoted in Des Moines reflect price being quoted at mill base at those places.

Q. In other words, consumers in Des Moines pay Hannibal plus—in other words, Hannibal base plus freight, rail freight?

A. Well, that is the prevailing price for cement in Des Moines.

41877 Q. And for how much of an area around Des Moines?

A. I do not know.

Q. Well, does it go to any other adjoining towns there?

A. I do not recall just what area that would be.

Q. Does it cover some area besides Des Moines? Does it go a little beyond Des Moines on this base, Hannibal base?

Q. When did the Hannibal base begin to control,—Hannibal-Sugar Creek?

First, let me ask you: You say Hannibal-Sugar Creek, was there one base there, those two points; are the two bases identical? What is the situation?

A. The rate is the same.

Q. The rate is the same, and is the base the same, too, at Hannibal and Sugar Creek?

Mr. Seeley: Can I ask that Your Honor request Counsel to fix the time?

Trial Examiner Norwood: I will instruct the witness to answer all these questions with respect to the time prior to July 2, 1937.

41878 A. Yes, sir.

Trial Examiner Norwood: Read the question.

(Question read.)

A. Not always.

By Mr. Paulson:

Q. Well, did either the Hannibal or Sugar Creek base control? I am using "control" in the sense we have
41879 used it here, no particular significance to it, control the Des Moines area any time prior to the time this complaint was issued, July, 1937?

A. I do not recall specifically. We have found quotations reflecting prices back to Mason City and other points at various times.

Q. Well, do you recall now whether Des Moines was based on Sugar Creek or Hannibal or Mason City in 1937, up to July?

A. No, not specifically. I would not recall which one.

Q. Well, was Des Moines ever based on Mason City prior to July, 1937?

A. Yes. We have found quotations reflecting a price back to Mason City.

Q. What I originally attempted to find out was whether some of the trade area surrounding Des Moines is priced on the same basis as the City of Des Moines.

A. If the freight rates were the same, there is a possibility that they had the same price.

By Mr. Paulson:

Q. Well, I do not mean the same price, but I mean when a price change occurs in Des Moines, does that change also occur in the surrounding trade area?

A. If in checking up at some towns within the
41880 radius of 10 or 15 miles from Des Moines we found a different price, or the same price, why, we would meet it.

Q. I am trying to find out what has been the case, what was the case? It is true, is it not, that some of the adjoining towns and Des Moines change at the same time? In other words, a change in base price at Mason City would change the destination price at Des Moines, and some of the surrounding trade area; isn't that true?

A. It would change based on the published freight rate.

Q. All I am trying to find out, is whether or not Des Moines is a particular instance, or whether it just is part of a trade area there.

A. The rates from various producing centers may have the same rate in Des Moines and vicinity, if that is what you mean.

Q. That is what I mean, yes.

A. As grouped in the tariff.

Q. That is what I mean. The fact is that some of the surrounding trade area does group with Des Moines freightwise, isn't that true?

A. That is the way rates are usually published; I mean the interstate.

Q. You have never known of a price change in Des Moines, in other words, which was not reflected at some of the adjoining towns?

A. No, I would not recall any published prices.
41881 Q. Now, the situation is, then, that in 1937, to your best recollection, the purchasers of cement in Des Moines paid Mason City plus—Mason City base plus freight—1937?

A. They paid the prices that were being quoted for cement publicly by various competing companies.

Q. I want to know what that was. You see you know what those facts are, and I am trying to find out what they are.

41882 A. The prices that we found in the Des Moines market usually reflect a price back to a mill base;

whether it was Mason City or Sugar Creek or Hannibal, I would not know exactly, in 1937.

Q. But one of those, anyway?

A. Yes.

Q. Now, the same thing would be true for the period from,—prior to 1937?

A. Yes.

Q. I remember an exhibit in the record here, Mr. Manley, put in by the Commission, wherein it appears that Mr. Condon wrote to Governor Herring, former Governor Herring of Iowa, and talked about explaining your method of pricing to him. I am going to show it to you.

Mr. Seeley: What exhibit number is that?

By Mr. Paulson:

Q. Commission's Exhibit 2233-A, I believe, Mr. Seeley. Now, I stated to you that this was written by Mr. Condon to Governor Herring. Well, it is not. As you will note, it is a letter, John B. Reynolds to Mr. Condon. Have you ever seen that letter before?

A. I may have seen it, but I just do not recall it. Now, what part of this do you—

Q. Well, I just want to know whether you have seen this before, first.

Now, Commission's Exhibit 2234 is a letter from
41883 C. B. Condon to John B. Reynolds. Have you seen that before?

A. I recall the correspondence.

Q. Well, now, you recall that this correspondence was about educating Governor Herring as to the reasons for your method of pricing, wasn't it? Do you recall that?

Mr. Werle: I object.

By Mr. Paulson:

Q. I will show it to you and let you read it, if your memory is not refreshed.

41884 A. I never heard Mr. Condon talk to Governor Herring.

By Mr. Paulson:

Q. Well, I did not ask you that, Mr. Manley. You said you were familiar with the correspondence, and I wanted to find out if your memory was clear as to what the correspondence was about it.

What was it?

A. Well, I saw the carbon copies of the correspondence. You asked me if I saw it.

Q. Well, at that time were you in discussion with Mr. Condon regarding this chain of correspondence?

A. No. I was not in discussion with him about it.

Q. And were you a consultant with him at all?

A. No.

Q. Did you help to formulate any of these letters?

A. No. As I recall, he went over to see him, to the State House.

Q. I want to find out what your connection with the matter was. What were you doing at that time—this is 1935.

41885 A. Well, I was in Mr. Condon's—I was Mr. Condon's assistant, but, of course, I did not go with him to attend this conference with Herring.

Q. But didn't he talk over any of these matters with you?

A. There really would not be anything for him to talk over with me in a matter like that when he was going to have a discussion with the governor.

Q. Well, this discussion with the governor was about what?

A. You mentioned about the pricing.

Q. Mr. Condon was going to explain to the governor why your prices—why they priced the way they did; isn't that true?

A. Yes.

Q. Well, now, you know why you price the way you do, don't you?

A. We have always met competition in our territory.

Q. Oh, I have not—

Trial Examiner Norwood: Answer his question.

By Mr. Paulson:

Q. I have not asked you why you do price. I just want to know whether you know anything about the affairs of your company. I understood you were general manager or something,—aren't you?

A. Yes.

Q. Well, you ought to know.

I presume that you would know as early as 1935 why your company pursued the policies that it did. Do you?

41886 A. I stated we have been making our prices to

compete with the prices that we find in the territory ever since the company has been in existence. We have always followed out that policy.

Q. Yes, I understand you say that.

Did you agree with the philosophy of Mr. Condon on the pricing methods that the company was following when he was manager, president?

A. Yes.

Q. You knew what they were?

A. As I stated before.

Q. Did you agree that it was a good idea to go and talk to Governor Herring?

A. Oh, I had nothing to do with that.

Q. Did you agree that it was a good idea?

A. Well, he was my superior. I did not even suggest anything like that, because I had no occasion to.

Q. Did you attempt to negative it?

A. There would be no reason why I should give it any consideration at all.

Q. At that time you were not consulted on those matters, were you, taken into confidence?

A. I was his assistant.

Q. Did he make a practice of talking over such matters with his assistant, with you?

41887 A. He was entirely responsible for the policy of the company at that time, and, naturally, his actions were his own.

Q. You say in your stipulated testimony that "It was the understanding of the Hawkeye management that the purpose of that committee (speaking of the Public Relations Committee of The Cement Institute) was to acquaint the public with the basic and fundamental facts concerning the marketing methods and practices in the cement industry."

Now, you seem to be in full possession and knowledge there as to the purposes of the Public Relations Committee. How does it happen you have that information and do not seem to know anything regarding the position of your company with regard to Governor Herring?

A. I used to read some of the circulars or something information that came out from that committee.

Q. Well, the fact of the matter is, isn't it, that you have been active in the management of that company for some time?

A. Active but restricted on authority.

Q. Yes, I understand that.

Well, now, as I understand the situation, Mr. Condon went to Governor Herring to talk to him about your pricing methods; isn't that correct?

A. According to the correspondence, that is what he went over there for.

Q. Do you know it only from the correspondence?

41888 A. I do not recall what started it.

Q. Well, do you know it only from the correspondence?

Trial Examiner Norwood: Answer the question.

A. It is so many years ago. It may have been instituted by something about the highway bids, or something like that that would have started it, that I really do not feel as though I can come out and say I really know what he went over there for.

By Mr. Paulson:

Q. No, but the record is quite complete here, too, the president of your company carried on these negotiations or talks and we want to find out the rest of the picture, that is all, and thought maybe you could help us on it. I am asking you now if you do recall what led up to this conversation, this interchange of correspondence between Mr. Condon and Governor Herring.

41889 A. If that was a specific subject like a letting, or something like that, that had gone on in the past, I really feel I would be very familiar with it, but that is a matter, like Mr. Condon may have attended committee meetings of one kind or another over a period of time, and I would not know anything about it. That would be not a regular routine matter.

By Mr. Paulson:

Q. This is something that he handled, himself?

A. Yes.

Q. Well, what I want to find out, and I will ask you this question, and see if I can: What arguments did he advance to Governor Herring to educate Governor Herring that your pricing method which as you have described was one whereby Des Moines paid Mason City plus or Hannibal plus was in the public interest?

41890 A. I did not attend the conference, so I really do not know what the discussion was specifically about.

By Mr. Paulson:

Q. I did not ask you that.

Mr. Paulson: Read the question, please, or the first part of it, at least.

(Question read.)

By Mr. Paulson:

Q. I will change the question, now. I will ask this question, rather: What arguments can you advance to show that your method of pricing is in the public interest?

Mr. Seeley: I object, Your Honor.

Q. Bearing in mind that the price which the public must pay in Des Moines,—the quotation that is made to the purchasers in Des Moines,—is Mason City plus or Hannibal plus?

41891 Trial Examiner Norwood: The objection is overruled. This goes to that paragraph (55) there, which goes into these subjects.

Mr. Paulson: That is correct.

Mr. Brick: Your Honor, paragraph (55) has been called a pleader's conclusion both by Mr. Wooden and Mr. MacIntyre.

Trial Examiner Norwood: No, no, Counsel misunderstood me. Paragraph (55) of the stipulation here he is cross-examining him on that.

Mr. Brick: I beg your pardon, sir.

Trial Examiner Norwood: Proceed.

Answer the question.

A. Taking all our customers into consideration,
41892 we do not feel that the Des Moines dealers are being treated any differently than all the rest of them.

By Mr. Paulson:

Q. Now, there is another mill at Des Moines, isn't there?

A. Yes, West Des Moines.

Q. Have you found quotations from that mill different from your quotations in Des Moines?

A. I do not believe we have.

Q. Well, then, the situation is that the consumers of cement in Des Moines and the area around Des Moines do not get any benefit from the two mills that are located there,—price wise,—is that true?

A. They are paying the prevailing market price in that territory.

Q. Which is the same as though they were not there,

so far as price is concerned; isn't that true? The same as if the mills were not there?

A. No. There would always be a price.

Q. Yes, but the price that is there now, you have told us, is either Hannibal, Sugar Creek, or Mason City base plus rail freight; that is true, isn't it?

41893 Trial Examiner Norwood: Didn't you tell us that?

The Witness: I do not recall whether I answered that kind of a question direct.

By Mr. Paulson:

Q. No, but in substance. I am not attempting to confuse. That is in substance the situation, isn't it?

A. Yes.

Q. Well, now, I want to get back again and ask you, can you explain to me how the existence of the two mills at Des Moines affect price quotations in that area?

A. It has always been our policy to meet the competition as we find quotations throughout our territory at all times, and other mills at times reflect a price back to their mill, and we cannot expect to get any more money for our cement than they can, so that is how we arrive at our price.

By Mr. Paulson:

Q. Well, you can see no effect upon quoted prices
41894 in the Des Moines area from the existence of the two mills there, then?

A. No.

Q. Do I understand from the fact that the price at Des Moines is equal to the base at Mason City, Hannibal or Sugar Creek plus rail freight, that those mills there ship into Des Moines?

A. Yes.

Q. Do the mills in the Gas Belt ship into Des Moines?

A. Yes.

Q. Does any mill in Illinois ship into Des Moines?

A. Yes.

Q. From what distance does the farthest shipment come to Des Moines? If you do not know the distance, tell us the mills most distantly located from Des Moines that ship to Des Moines?

A. Well, Kansas City, Humboldt, Kans., Louisville, Nebr., Dixon and LaSalle, Ill.

Q. You say that this situation has been continuing for

a long period of years, and you do not know of a situation to the contrary; is that true?

A. Yes.

Q. Now, a few more questions, Mr. Manley:

On what basis did you file prices with the Code Authority?

A. Our prevailing market prices.

41895 Q. And your prevailing market prices, you said, in most all instances,—I think you even said in all instances,—were the equivalent of some base plus freight; is that true?

The Witness: They usually reflected a base. At times we filed prices to meet competition at other points.

Trial Examiner Norwood: Well, he said your prevailing prices, I think. He meant your usual prices. So that was that correct in that sense?

The Witness: Our usual prices were our regular quotation figures.

By Mr. Paulson:

Q. Base plus freight? Some base plus rail freight to destination?

A. They were the prevailing prices at those various towns.

Q. Then, let me ask you about the prevailing prices at those various towns.

Weren't the prevailing prices at the towns in 41896 which you sell the equivalent of some base plus freight?

A. Usually.

Q. Yes. And when you filed them with the Code Authority,—I am trying to find out whether they were filed from your master quotation sheets, or whether you filed base plus freight.

A. We just turned our master quotation book over to the stenographer and had them run off alphabetically.

Q. Do you recall how your master quotation sheet was made up at that time? By "at that time" I mean your first filing with the Code Authority.

A. By a thorough canvass of the territory we had picked up various quotations indicating certain prices were in effect as far as the individual companies went at a certain period, and we met them.

Q. Do you recall whether any destination point at which

you quoted was not the equivalent of a base plus freight at that time?

A. In meeting file prices that we knew had already been filed with the Code we had no idea how they were made up.

Q. You did not answer very directly, Mr. Manley. I want to know whether you know that the destination prices that you filed with the Code Authority were not all the equivalent of some base plus rail freight.

A. I do not know that they all were.

Q. At the present time. Let me say—yes, at the
41897 present time are they not all the equivalent of some base plus freight?

Mr. Werle: Objected to.

Trial Examiner Norwood: Sustained.

By Mr. Paulson:

Q. On July 2d—the first part of 1937 were all the destination prices which you were quoting the equivalent of some base plus freight?

Mr. Seeley: Objected to, Your Honor. No evidence that this witness was filing any prices at that time.

Mr. Paulson: I said quoting.

Trial Examiner Norwood: Objection overruled.

Mr. Seeley: We are still on the subject of price filing.

Trial Examiner Norwood: Overruled.

A. I do not recall.

By Mr. Paulson:

Q. The period just before this complaint was issued, do you know of any arbitrary, so-called arbitrary prices in your trade area?

A. No, I do not recall any.

Q. How many times did you use land-grant rate information in 1935 and 1937, if you can recall?

A. The only time we used it was on the Fort Peck bid.

Q. Was that the only occasion you had to use land-grant rate information?

41898 A. Yes. I do not recall if it was '34 or '35.

Q. Is that the only occasion you had to use land-grant rate information?

A. Yes.

Q. Mr. Seeley introduced a letter in the record here showing that you asked the railroads about land-grant

rates. What was the purpose of writing that letter and asking about that?

A. There was so much interest in land-grant rates being discussed at various times in competitive circles that when we had the opportunity we would have them on file, figuring they might be available at some time in the future.

Q. About 1935 I think the record shows that the Institute inaugurated a land-grant rate service. Was it in conjunction with that that you secured some information?

A. No.

Q. Did you ever transmit any land-grant rate information to The Cement Institute?

A. No.

Q. Did you ever receive any from it?

A. We are on the mailing list, and if they send any out we receive it, but I do not recall, because we are not using it.

Q. Well, in all the history of your company have you used the land-grant rate only in that one instance in connection with the Fort Peck bid?

A. That is all that I recall.

41899 Q. In other words, there isn't any land-grant railroad serving your territory?

A. Oh, there are plenty of them.

Q. Then, the Government had not wanted to buy any cement? I mean, explain it.

A. We really have not had very much of an opportunity to bid on large projects of that kind, so we have never made a practice of keeping an up-to-date list of land-grant rates, figuring if the opportunity presented itself we could get them.

Q. What dealer were you speaking of in the colloquy between you and Mr. Seeley regarding a dealer at Superior, Nebr.?

A. I said Superior, Wis.

Q. What dealer were you speaking of there?

A. I do not recall. He called me on the telephone.

Q. He wanted to buy some cement?

A. In Superior, yes.

Q. How much cement did he want?

A. Just a few cars.

Q. Why did he call you way down in Des Moines, Iowa?

A. I have no idea.

Q. What terms did he offer?

A. Didn't discuss the terms.

Q. What price did he offer?

A. Didn't discuss the price.

Q. What would have been your quit not? Do you know?

41900 A. He didn't have time, and we didn't check it. It was just on the telephone.

I told him, as I remarked yesterday, that Superior, Wis., was altogether out of our marketing area, of our territory. We could not give him any service; he had never gotten quotations from us in the regular way; and the business was not even attractive to us.

Q. Did you investigate to find out whether it was attractive to you?

A. No.

Q. Do you know that it was attractive business, or not?

A. We know from experience that we could not service Superior, Wis.

Q. Well, he wanted to buy cement, didn't he?

A. We are looking for the future.

Q. Well, you want to sell a few carloads of cement, don't you, once in a while?

A. When we get a dealer contact we figure as much for the future as we do for the present.

Q. You mean if you sold him it might have reactions on the cement companies selling him in that area?

A. No—

Q. It could not possibly hurt you, could it?

41901 A. We know from experience that we could not expect to hold onto a dealer as far away as Superior, Wis.

By Mr. Paulson:

Q. And that is the reason that you did not sell him?

A. Yes.

41908 Q. Mr. Manley, do you know that any term or condition under which you sell cement is different from a corresponding term or condition of any competitor?

A. We have in the same manner tried to meet the terms of other companies, because we feel we could not expect to sell any cement if we did not have as good a term as another company.

Q. Your answer is no—

A. No.

Q. —with that explanation.

Do you give the public an opportunity to buy your cement at the same price you sell to the railroads?

A. In selling to the railroads, we meet the competition that we feel we have to meet from other cement companies.

Q. Your answer is "yes" or "no," with that explanation?

A. Yes.

Q. You do give the public the opportunity to buy your cement at the same price you sell to the railroads?

41909 Mr. Seeley: I object, Your Honor. The term Mr. Paulson uses, "the public," is not sufficiently clear as to the kind of customer he is speaking of. The public includes the railroads.

Trial Examiner Norwood: Objection overruled.

By Mr. Paulson:

Q. I want to know what your policy is.

Trial Examiner Norwood: Do you mean the dealers? Do the dealers buy it under the same terms and at the same prices as the railroads?

Mr. Paulson: Yes; that is the question.

A. They buy on the same basis.

By Mr. Paulson:

Q. What do you mean on the same basis?

A. Delivered.

Q. Well, you answered as to type. I am asking you specifically as to prices. I understood you on direct to say that you quoted railroads f.o.b. their tracks at your mill. Is that correct?

A. Those that enter our mill, f.o.b. their tracks.

Q. Now, what is the price at the mill?

A. Well, that is their destination. The railroads take it at our mill.

Q. What is the price?

A. At destination.

41910 Q. What is the price that you sold cement to the railroads at in 1937?

A. The price that we felt we had to sell them to meet the competition of other cement companies.

Q. What was it in dollars and cents per barrel?

Mr. Werle: Oh, I object to this, Your Honor. We offered sheets yesterday showing what prices were at various points on certain dates, and they were rejected. The witness can't remember.

Trial Examiner Norwood: Objection overruled.

Mr. Werle: I have not finished the objection, if Your Honor please.

Trial Examiner Norwood: I do not think it is necessary. Proceed.

A. I do not recall what price we made the railroads in 1937.

By Mr. Paulson:

Q. Can dealers go to your mill and buy cement in their own vehicles at the price which you would sell it to the railroads?

41911 A. No.

By Mr. Paulson:

Q. Do you have requests by dealers for delivery of cement to them in trucks at your mill?

A. No.

Q. Have you ever had any since 1933?

A. Not that I recall.

Q. You do not have knowledge that will enable you to say "yes" or "no"?

A. No, because we have not been delivering to trucks for such a long period of time. If there was any particular request that might be on the telephone I wouldn't get it.

Q. You have a policy not to deliver to trucks at your mill; is that correct?

A. Yes.

Q. Have you advised the respective purchasers of your cement, your dealer trade, and so forth, of that policy?

A. Yes, quite a while ago.

Q. Is there a cement road leading to your mill?

A. In one direction.

Q. Paved with your cement?

41912 A. In one direction.

Q. Don't you think you should allow that road to be used to carry your cement?

41913 A. There are a lot of roads paved with cement other than Hawkeye.

By Mr. Paulson:

Q. Mr. Manley, you have a way of not answering the question.

Trial Examiner Norwood: Don't you think you can answer that more directly?

The Witness: If you are going to deliver in trucks, I don't think it would make any difference whether the road is paved or not.

By Mr. Paulson:

Q. But wouldn't it be in the public interest for
41914 your to make deliveries to trucks, considering the road situation around your mill?

A. We paid plenty for that road when it was put down.

Q. Don't you feel you could render the public around Des Moines a service if you allowed delivery to trucks?

A. As far as that particular road was concerned, we did a favor to the public when we paved it.

Q. That is not quite the question. I say, don't you think you would be favoring the public if you would open your mill and allow customers to come and get cement in trucks?

A. No. Past experience has taught us that if was not a favor to the public.

Q. Mr. Manley, do you have a traffic department?

A. It is combined with our sales department.

Q. What is the set-up?

A. The work is a joint proposition.

Q. How many traffic experts do you keep?

A. We do not keep any experts.

Q. When you say it is combined with the sales department, you mean that some salesman, some assistant sales manager, handles the traffic matters?

41915 A. As part of their duties, yes.

Q. In checking your freight rate books with those of the Institute, do you sometimes find discrepancies?

A. We use The Cement Institute books just as a check on our own work; that is, considering the human element that enters into copying figures onto a report; that is, transposing the wrong ones.

By Mr. Paulson:

Q. Answer the question now.

Mr. Paulson: Read the question, please.

Trial Examiner Norwood: Read the question.

(Question read.)

A. I do not recall that we did.

By Mr. Paulson:

Q. Do you ever check your freight rate books with those of the Institute?

A. We use them to check our own.

Q. I say, have you personally?

A. No.

41916 Trial Examiner Norwood: Well, if discrepancies are found would it come to your attention?

The Witness: No. They have not been called to my attention.

By Mr. Paulson:

Q. Would they be called to your attention in the regular course of business if they were found?

A. No.

Q. What would be done?

A. They would use the rate in the tariff as the correct one. If they would by any chance come across any difference in a rate between the one that we were—we had put in our book, as compared to the Cement Institute book, the rate in the tariff would be the effective one.

Q. Then, why check it?

A. It was just some information that came to us in the regular course of business, and had been evidently taken from the same source at one time, and it just gave us another person's efforts, and we used it to our own advantage in checking our own work.

Q. But you used your own, as I understand you. Why, then, do you check?

A. Because we want to have the correct rate.

Q. The result of your checking is merely indicative to you that the Institute book and yours differ; is that correct?

41917 A. No.

Q. What is the benefit of checking?

A. Usually when anybody makes up a statement, or something, they try to proofread it back, and instead of checking it from the tariff it is really of some benefit to anybody to get somebody else's efforts connected with it.

Q. Have you ever found that you were low at a destination point, Mr. Manley?

A. Not that I recall.

Q. Have you ever avoided being low by a check,—by virtue of your checking with the Institute books?

A. No.

Q. Have you ever avoided being high by virtue of your checking with the Institute books?

A. No.

Q. Are the Institute books of any particular help to you in quoting at destination points to which you do not regularly quote?

A. No.

Q. Have they ever been of use to you in quoting on Government lettings?

A. No.

Q. What do you consider to be the value of the Institute freight rate service?

A. We really do not need it.

41918 Q. You would just as soon that it would be abandoned?

A. Our record shows we have abandoned it at times.

Q. But would you favor its abandonment in the industry?

A. It would not make any difference to us.

By Mr. Paulson:

Q. Well, why do you pay dues to support it?

A. We consider it part of the services of The Cement Institute, and it just comes along to us.

Q. I do not understand why you should pay out your hard-earned cash for something which you consider to be of no value.

Would you explain that, please?

A. I do not consider that we are paying very much for it.

Q. Well, you are paying some for it.

A. Well, we are also a member of The Cement Institute.

Q. Well, why do you pay anything for it?

A. We receive it on account of being a member of The Cement Institute.

Q. Well, what is there of value in the Institute service to you?

A. Well, we belong to the Institute, to The Cement Institute, on the same principle as we belong to the Portland Cement Association or the Des Moines Chamber of Commerce, or the National Association of Manufacturers.

Q. Just goodfellowship esprite de corps?

A. Figuring that we get some advantage out of knowing what is going on in the industry.

Q. Well, you are interested to a certain extent in the uniformity of practice between competitors, are you not?

A. Not necessarily.

Q. Well, are you interested in the contrary?

A. We would have no control over it.

Q. No, but I am trying to find out where your interests lie, so that we can understand your acts and actions, methods.

Will you tell us now whether you are interested in the continuance of The Cement Institute, and, if so, why?

41929 A. Well, we rejoined The Cement Institute during the formation of the Code, and have retained our membership in it ever since.

By Mr. Paulson:

Q. Why?

A. After the Code period the dues were reduced considerably, and—

Q. You are in it because it is a bargain, in other words?

A. —and the information we received during the period after the Code period and up to the time of the complaint was very interesting and of use to our company.

Q. What information was of use to your company, and how?

A. The statistics that we received from them.

Q. What statistics?

A. Information of shipments in, generally, and particularly, in our territory.

Q. You get the general statistics from the Bureau of Mines, don't you?

A. Yes, but we get them broken down in better shape in our immediate territory.

Q. How?

A. From The Cement Institute.

Q. I mean, how do they break them down so that 41931 they are of better service to you? In what respect?

A. We are in position to know more directly what our competitors in Iowa were doing. The Bureau of Mines, as I have already stated—there is a plant at Cape Girardeau, that is a long way from Des Moines—at St. Louis. In the winter time we are not interested in their statistics, the business that they do down there, we know we are not losing anything when they are shipping.

Q. You want to know the individual details?

A. We want to know the business in our territory.

Q. You want to know what your competitors are doing?

A. No. The volume of business in the State of Iowa.

Q. You want to know the intimate details of his business?

A. It does not make any difference what our individual competitors are doing. It is the volume of business in our particular territory that we have an opportunity to solicit and hope to secure.

By Mr. Paulson:

Q. I thought you learned of the prospective volume of business from the Dodge statistics.

A. No.

41922 Q. Is that correct?

A. No. I did not say that.

Q. Well, does the Institute give you figures as to what the prospective business is going to be in your territory?

A. That is quite up to date, and it is the condition of the territory in which we are soliciting business regularly. It does not change in a week or two weeks.

Q. The Bureau of Mines gives you the total shipments into Iowa?

A. About two months later.

Q. How is it of any advantage to have it within 60 days rather than 90 days?

A. Well, there is no advantage to us in securing on the first of January the business that went on November 1st, because then we are all froze up in Iowa.

Q. Even knowing that your competitors are getting more business than you are getting, how does that help you?

A. Well, it serves as a stimulus to our company to get after our salesmen and show them that there is business in Iowa, although they say there was not.

41923 Q. Showing you Commission's Exhibit 2229-A, and I will ask you to look at that and see if you can tell me whether or not this is a letter that was sent by Mr. Condon? There is some handwriting on there, "C. B."

A. "C. B. C. File."

Q. "C. B. C. File."

Well, tell us if you can whether that is a letter written by Mr. Condon?

41925 A. I do not know that he actually wrote the letter.

By Mr. Paulson:

Q. Well, what do you know about it? Do you know that such a letter was sent from the Hawkeye Company to the addressee there?

A. No. That is so many years ago that I just do not remember the letter going out.

Q. Well, do you know that such a letter was written in the offices of the Hawkeye Portland Cement Company?

A. (No response.)

Q. What do you know about it?

A. How do you mean, what do I know about it?

Trial Examiner Norwood: Tell us anything that you know about that letter, or any information you may have about its having been prepared, dictated or mailed.

The Witness: I know that he knew Keller in San Francisco, and this might be just a—more or less of a personal letter that he wrote to him.

Mr. Seeley: I object, Your Honor. The witness' 41926 answer shows that the entire inquiry is speculative.

The witness has answered that he does not know that that letter came from his company's files, or is not in a position to know whether that letter was written by anyone in the Hawkeye Company. The answer is entirely speculative.

Trial Examiner Norwood: The objection is overruled. Let the Counsel secure any information he can about the letter.

By Mr. Paulson:

Q. Have you seen a copy of that letter at any time, Mr. Manley?

A. I may have seen it but I never read it. I read more today since I have been here than I—

Q. You think you have seen it before?

A. If it was in our file, why, I—

Q. Well, do you recognize it as something that has been in your file?

A. Not individually, I do not recognize the letter.

Q. But do you know of a chain of correspondence between Mr. James A. Keller and Mr. Condon?

A. No.

Q. Do you know that they had correspondence?

A. They were personal friends. He knew him on the Coast about 1909 or 1910.

41927 Q. Do you know of any request by Mr. Keller that might have permitted such a reply to Mr. Condon?

A. No.

Q. You said a little while ago you had read more of it now than you ever had before?

A. I never had a chance to.

Q. Well, when did you read part of it before?

A. I do not recall of ever seeing it.

Q. Well, not this particular document, but the document of which this is a photostat copy, have you ever seen that?

A. Not that I recall.

Q. Have you ever read the whole letter so that your memory is completely refreshed regarding the subject matter of it?

A. That seems to be a review of conditions in 1931.

Q. Yes. Now, crystallizing your thought there, does it bring back any recollection of correspondence between Mr. Condon and Mr. Keller?

A. No, it just shows the unsettled conditions which we all know prevailed.

By Mr. Paulson:

41928 Q. In other words, at this time in 1931, you were not in position with the company which would cause such matters to come to your attention; is that so?

A. Yes.

Q. Do you recognize the handwriting here, "C.B.C. File"?

41929 A. "E. L. Gale."

Q. Who is E. L. Gale?

A. He was assistant sales manager at that time.

Q. Does that indicate to you that that letter came from your files?

A. Over his desk.

Q. It passed over his desk. You think—doesn't that indicate to you that that is a copy of a letter which was written in the offices of the Hawkeye Portland Cement Company?

A. It could be.

Q. Well, isn't that a familiar signal there, "C. B. C. file"?

A. Yes.

Q. You do not have any doubts at all, do you, that that is a photostat of a carbon copy of a letter written in the offices of the Hawkeye Portland Cement Company, do you?

A. I am really not in a position to say.

Q. Well, you do not have any doubt about it, or, if you do, why, say that you do. All I want is an answer.

A. (No response.)

Q. Do you want to say you have doubts? If you do, say so; if you do not, say no. Do you or don't you have any doubts?

A. No.

Q. Is it likely, in your opinion, that it was written by Mr. Condon?

A. Yes.

41930 Q. Showing you Commission's Exhibit 836-2-B, I will ask you whose signature appears on that letter?

A. C. B. Condon.

Q. Is that the C. B. Condon who was formerly connected with the Hawkeye Portland Cement Company; is that his signature?

A. Yes.

Q. I show you Commission's Exhibit 832-E, and ask you if you recognize the signature that appears on this exhibit?

A. Yes.

Q. Whose signature is it?

A. C. B. Condon's.

Q. General manager of the Hawkeye Portland Cement Company?

A. Yes.

Q. I show you Commission's Exhibit 576-5-S, and ask you if you recognize the signature that appears thereon?

41931 Q. I asked the witness if he recognizes the signature that appears thereon.

A. C. B. Condon.

Q. The same C. B. Condon that was general manager of the Hawkeye Portland Cement Company; is that correct?

A. Yes.

41932 Q. Showing you Commission's Exhibit 2627, Mr. Manley, do you recognize the signature that appears thereon?

A. Yes.

Q. Whose signature is it?

A. C. B. Condon's.

Q. Formerly general manager of the Hawkeye Portland Cement Company?

A. Yes.

41933 *Redirect Examination by Mr. Seeley.*

Q. Mr. Manley, yesterday Mr. Paulson asked you whether the Hawkeye Company had had requests for prices f.o.b. mill, and the record shows that your answer is "yes." What did you have in mind in answering that question,—what did you refer to?

A. Well, we had the Good Friday bid in mind, the telegraphic inquiry for some cement for Fort Peck.

Q. You referred to Respondents' Exhibit, in evidence, 3386-A to H.

A. Yes.

Q. And did the Hawkeye Company quote f.o.b. mill on this inquiry?

A. Yes.

Q. Now, with respect to this same inquiry, Respondents' Exhibit 3386, Mr. Paulson questioned you concerning the specifications yesterday. I will show you these papers. There are several papers dealing here with the chemical content and normal consistency of the cement on which the Government requested quotations in that in-

quiry. I now ask you with respect to the cement on which you quoted f.o.b. mill in response to that request, was that your standard Portland cement on which you were quoting?

41934 A. Yes, it was our regular cement that was in silo A. We had sent them a sample of it.

Q. Was that the same cement or a different cement than the cement in which you quoted prices to your regular commercial trade?

A. The same cement.

Q. Yesterday, Mr. Manley, Mr. Paulson questioned you concerning the practice of the Hawkeye Company in respect to claims for loss or damage in transit, and reference was made to Respondents' Exhibit 3371-A to G, which I now show you. I want to ask what has been the practice with respect to that transaction and the general practice of the Hawkeye Company in situations of that kind with respect to either crediting the customer's account or allowing the customer, or remitting to the customer the amount of damages; when does the Hawkeye Company credit the customer in point of time?

Trial Examiner Norwood: I think he told us that. Go ahead.

A. As soon as we satisfy ourselves that he has the money coming.

By Mr. Seeley:

Q. Well, look at that exhibit. Is that before or after the Hawkeye Company makes the claim?

Trial Examiner Norwood: He explained that he did that as a matter of policy before.

41935 A. Before.

Trial Examiner Norwood: Before the claim was allowed.

By Mr. Seeley:

Q. Now, I want to show the witness the record for yesterday, the record of June 19, page 41654, lines 15 to 18, at which point His Honor asked the witness a question and the witness answered, and I want the witness now to state whether that correctly states the facts.

A. We sent them the credit before the claim was filed.

Q. Does the record, as it stands, correctly state the facts, or does it not?

A. I evidently misunderstood His Honor, when he

asked me if the Hawkeye Company then sends its credit slip.

Q. It had already sent its credit slip?

A. Yes.

Q. Prior to making any claim to the railroad?

A. Yes.

Q. Now I ask you to look at Respondents' Exhibits, for identification, 3372-A to C, 3373-A to C, and 3374-A to H, and I ask you with respect to those, the transactions covered by those papers, which you identified yesterday, whether the practice of the Hawkeye Company was the same or different than you have just testified to?

A. The same.

41936 Q. Has the practice of the Hawkeye Company ever been any different than you have testified to with respect to crediting the customer?

A. No.

By Mr. Seeley:

Q. Mr. Manley, yesterday Mr. Paulson was questioning you concerning the cases where the Hawkeye Company has sold cement at prices below its published quotations, and he asked you yesterday whether you knew what you were going to get until the sales were consummated, I now want to ask you whether as to any of the sales which your company has made since you have had anything to do with the sales,—have you or have you not known what you were going to get until the sale was consummated?

A. We have not.

41939 (RESP. EX. 3400-A to 3400-O, was offered and received in evidence.)

41940 Q. I am now directing your attention, Mr. Manley, to His Honor's question yesterday when His Honor asked you with respect to the sales made by the Hawkeye Company at prices below its published prices, its published quotations. The record shows that His Honor used the word "contract" and he asked you what percentage of your contract business, was affected by sales at so-called secret prices.

41941 Now, in answering His Honor did you mean to include in the percentage you gave sales of the Hawkeye Company to its dealers? Did you answer, in answering that question in which His Honor used the word "contract," did you mean,—did you include contract sales to dealers?

A. Yes. I really included the whole thing.

Q. Contract sales to concrete products manufacturers or contract sales to concrete block plants?

A. Yes.

Q. And contract sales to ready-mix plants?

A. Yes.

Q. I now ask you with respect to such sales as the Hawkeye Company has made on highway paving work since 1934, on what part of those sales has the Hawkeye Company made prices or sold cement at prices below its published quotations?

A. Just contracts on paving work.

41942 Q. I want to know on what percentage of your highway paving business you sold cement at prices below your published quotations since 1934 to 1937?

A. Oh, it would be different in various years, but I would say it ranged from 30 to 50 percent.

Q. Mr. Manley, has any other cement company or any representative of any other cement company had any part in the policies or any voice in the management or operation of the Hawkeye Portland Cement Company?

A. No.

41958 LOUIS J. HOENIG was thereupon called as a witness for the Respondents, and, having been first duly sworn, testified as follows:

It is hereby stipulated and agreed that the witness L. J. Hoenig, sales manager of Nebraska Cement Company, shall be deemed to have given direct testimony in this proceeding, subject to the same conditions agreed upon with respect to the stipulated testimony of Charles Horner heretofore appearing in the record at page 36801, as follows:

41959 1. The Nebraska Cement Company is a Delaware corporation, incorporated on December 1, 1936, for the purpose of selling cement produced by the mill of the Ideal Cement Company located at Superior, Nebr. Its sales office is at Omaha, Nebr. Prior to the incorporation of the present company the plant at Superior was operated by the Nebraska Cement Company, a Nebraska corporation, which was a subsidiary of the Ideal Cement

Company, then a holding company. The Nebraska corporation was dissolved on June 9, 1937.

2. The plant at Superior was constructed in about 1915 by the Nebraska Portland Cement Company, an organization financed by local capital in the State of Nebraska. The Nebraska Portland Cement Company encountered difficulties from the outset and, after operating the plant for a brief period, went into receivership. In need of additional financing, a committee representing the stockholders of the Nebraska Portland Cement Company contacted officials of the Ideal Cement Company, and a reorganization was effected whereby Ideal, through a new company, Nebraska Cement Company, formed on May 18, 1917, was to operate the Superior plant for an experimental period of ten years with option to purchase full control at the end of that period.

3. The ten year experimental period was provided in part because the plant at Superior was a dry process plant and the Ideal Cement Company doubted that such a
41960 plant could be successfully operated. During the experimental period the plant was converted into a wet process type at considerable expense. At the end of the ten-year period the option was taken up and the Nebraska Cement Company took over full control and management of the plant.

4. Nebraska has never operated any silos, warehouses or supplementary storage or distributing facilities other than the storage facilities at Superior, Nebr., appurtenant to the mill.

5. The company does not manufacture any special cements requiring the addition of iron or other compounds. There was only one occasion when the Nebraska Company has ever manufactured any such special cement and that was in connection with shipments to the Fort Peck Dam project. The addition of iron ore at increased cost was necessary to meet the special specifications for that project.

6. The Nebraska Company obtains all the raw materials necessary for the manufacture of cement, except gypsum, which constitutes not more than three percent of the finished product, from a quarry located adjacent to its plant. Gypsum is obtained from Blue Rapids, Kansas, about 100 miles from Superior.

7. Superior, the site of the plant, is served by four

railroads, the Atchison, Topeka & Santa Fe; the Chicago, Burlington & Quincy; the Chicago & Northwestern, and the Missouri Pacific. The plant is not located on or near water and the company has therefore never made or been requested to make any shipments from its mill by water.

41961

8. The capacity of the Superior plant is between 2,600 and 2,800 barrels a day. These figures represent what the plant has actually done in the past. Because of the dependence of demand in Nebraska's territory on success or failure of agriculture crops, frequent crop failures and the varying seasonal demand throughout its territory, the company has never been able to operate its plant at full capacity over any year's ~~period~~. In 1930, the best year to date, it produced 673,000 barrels of cement and in 1933, when business conditions were at their lowest ebb, it produced 164,000 barrels. The plant was closed down during the first seven months of the latter year.

9. The witness does not know of any business sharing plan or plan for allocation of business among cement companies, and the Nebraska Company has never operated its plant under any such arrangement. Nor has the company ever been a party to any agreement, understanding or arrangement with respect to limiting, regulating, or curtailing its production or its shipments.

10. Nebraska is at the present time a member of The Cement Institute. It first joined The Cement Institute in May, 1930, as a member of the Kansas City Division. Its membership continued until September, 1930, at which time it resigned. Nebraska rejoined the Institute in 1933, in order to participate in the preparation of an N.R.A. Code for the cement industry. The policies and practices of the Nebraska Company were and have been formulated and shaped by competitive conditions over the entire period of its operation. The basic policies and practices of the company have been in existence since the early years of its operation. The company's policies and practices have not been formulated or shaped by The Cement Institute, nor has the witness ever considered that that was the purpose or effect of the activities of The Cement Institute.

41962

11. Nebraska has 1,800 to 2,000 dealer-customers or prospective dealer customers whom it solicits constantly and from whom it obtains information as to competitive

activity. Of this number Nebraska sells its cement regularly to from 400 or 500.

12. Nebraska considers its dealer customers as an essential outlet for its product for the following reasons: The dealer is located conveniently in every locality with permanent and satisfactory equipment and service to take care of the general buying public; in this respect he has a suitable plant for warehousing so that cement can be purchased in large or small quantities to fit the requirements of all classes of customers; he is known to the public
41963 and always accessible; he knows the uses for cement, how to figure customers' requirements, and how and where to order cement; he deals in all other products used in building and construction and is therefore in a prime position to promote the use of cement.

13. For Nebraska to sell all its cement locally, to perform all the necessary services that its dealers perform at present, and to cover with the same efficiency the territory covered by its dealers, so much organization for selling and handling locally and special investments would be required that costs would be excessive.

14. Nebraska has no rigid or arbitrary standard by which it determines whether or not it will sell a particular person as a dealer. Whether or not a person will be sold as a dealer depends on the circumstances of the particular case. Generally speaking, Nebraska considers that a dealer must be in a position to finance and handle carload business. He must have warehousing and retailing facilities for the volume of business he could be expected to handle, and must handle a sufficient variety of other building materials to place him in the class of a retail merchant of building materials. The size and character of the area in which the prospective dealer is located has much to do with the type of facilities and services that Nebraska would require.

15. With respect to the territory in which it markets cement, Nebraska has found that it solicits and sells
41964 some customers as dealers whom its competitors do not solicit; that its competitors sell to some persons as dealers whom it does not consider to be dealers and therefore does not solicit as such; and that there are some persons whom both Nebraska and its competitors sell, so far as Nebraska is concerned at least, as dealers. Nebraska has never had any agreement or understanding with

its competitors or anyone else with regard to whether any particular person should or should not be sold as a dealer.

16. In addition to other reasons for Nebraska's difficulties with delivering cement to customers' trucks at the Superior mill, Nebraska found making such deliveries to be extremely inconvenient. The Nebraska mill was built for rail delivery. It was not physically equipped to handle truck loading. The operation from packing to carloading is a continuous, flowing operation by belt conveyor. The company loads cars on either side of the packing room. When freight cars were brought up along the tracks for loading, it was impossible for trucks to draw up to the packing room. Thus, when a truck would come, either carloading would have to be interrupted and the car shunted aside to permit truck loading, or the trucker would be forced to wait until carloading had been completed, usually a considerable length of time. The continuity of the packing and loading operation, of course, was interrupted and caused wasted time and inefficient opera-
41965 tion. Trucking also involved for the most part retail sized lots and consequent duplication and waste in bookkeeping and invoicing, irregular hours for loading crews and increased cost of handling generally. In addition, the main line of the Burlington Railroad runs immediately north of the packing room with the only means for trucks to enter or leave the property by a blind crossing over this line in addition to the switching tracks. Fatal accidents have occurred at this crossing and with customers' trucks coming and going the danger was multiplied many times.

17. Nebraska has never sold cement in any market where imported cement is sold. None of its dealer-customers or prospective dealer customers have ever handled foreign cement. The company has never taken any steps of any kind with respect to foreign cement.

41966 *Examination by Mr. Werle.*

I am the sales manager of the Nebraska Cement Company and have been sales manager since its inception
41967 back in—approximately 1918. Prior to that, for something over a year, I was assistant sales manager of the Colorado Portland Cement Company. That is somewhere in 1917, along in there. Prior to my connection

with the Colorado Portland Cement Company, I was connected with the legal department of a railroad company back East.

I am in complete charge of the sales of Nebraska, and have been in complete charge since 1918. I should say that I have full charge of the determination of the price policies and the commercial practices of Nebraska,—subject in a general way, of course, to my superior officers, but I would say I have full charge. There is no arrangement whereby the prices and the policies and the commercial practices of Nebraska are maintained on some parity or equal basis with the policies or practices of the other companies which are associated with the Ideal Ce-
41968 ment Company. I should say that there are differences in the practices of the different companies which have been associated with the Ideal Company. Nebraska has one plant at Superior, Nebraska. There have been no changes that I know of in the officers and directors of the company set forth on Com. Ex. 3176 T which is an answer to a Federal Trade Commission inquiry. That seems to be a correct list to date. Mr. Morse is named on there. Mr. Morse is now deceased.

The witness identified Resp. Ex. 3408 as a map
41969 which accurately reflects the area in which his company normally solicits business, and the area in which his company has a freight advantage over competitor companies, and the location of the cement plants with which his company competes. He did not prepare the map. He described for counsel the area in which Nebraska solicits cement in order that they might put it on the map.

Mr. Werle: With respect to the area of freight advantage, that was done in our office by a person who consulted, I believe, Cement Institute freight rate books, with one exception, where he used a rate book of the Colorado Portland Cement Company in connection with Colorado rates. I have in mind that we can call him to the witness stand in connection with the accuracy of his transferring these rates. I wanted to get it clear at this time what
41970 the situation is. I did want to offer the map while this witness is here because he has stated that that does accurately portray to the best of his knowledge and information the situation with respect to his mill.

Now, with that statement I would like to offer it in evidence at this time subject to any conditions that Your

Honor might want to impose (handing the exhibit to Mr. MacIntyre).

41978 Trial Examiner Norwood: Now, what time does this cover? That is, the situation affected here covers what time?

Mr. Werle: That is, I believe—well, I would rather have the witness state whether or not that is substantially the picture during the past eight or ten years, or whether there have been any changes, if you know.

The Witness: It is the picture substantially since I have been in the business. There has been very little variation in the territory.

Trial Examiner Norwood: How long is that?

The Witness: Over 20 years.

(RESP. EX. 3408 was offered and received in evidence.)

Direct Examination (Resumed).

By Mr. Werle:

Q. Mr. Hoenig, do you have charge of determining the area in which the Nebraska Company solicits business?

A. I do.

41979 Q. I would like to call your attention to Commission's Exhibit 976, which purports to be an answer of your company to the questionnaire of Professors Burns and Clark. Do you recall whether or not you personally participated in the preparation of this questionnaire answer?

A. I think I did.

Q. Will you look at Commission's Exhibit 976-4-N, the answer to question (11a), in connection with the factors which enter into the determination of your normal area of soliciting business, and tell me whether or not the statement there is a correct statement?

A. Yes, it is a correct statement, I would say.

Q. In this answer you refer to one of the factors as being the proximity of other mills. Will you tell me what you had in mind by that?

A. I had in mind the fact that solicitation close to other mills is not always satisfactory. Competitive conditions are much more intense. Service is much better. Other influences that help the sale locally, such as political influences and local influences sometimes make it not good

business even to spend the money to solicit near those plants.

Q. And that is one of the factors that you took into consideration?

A. That is one of the factors.

Q. In this questionnaire answer, also Commission's Exhibit 976-4-M, in response to question B(1), you
41980 refer to the abandonment of some parts of your territory. Would you look at that answer and tell me what you had in mind there?

A. I had in mind that since we started doing business one mill has been located in Nebraska not far from ours, and another mill is located in Wyoming, and I say here: "In some instance almost to the point of forcing abandonment of parts of our territory." But it never came to that level.

Q. I see.

A. The fact that these plants were placed in the territory, and at first we were struggling for business, made the competitive situation unusually intense. There were times when we were not very anxious to spend very much time and money in soliciting business. We were really interested in holding our trade.

Mr. Werle: In connection with this map, which is Respondents' Exhibit 3408, I would like to offer in evidence at this time Respondents' Exhibit 3409-A, B, and C, for identification.

It is merely a tabulation of certain population figures based on the 1930 census, as shown by the Rand-McNally commercial Atlas. It can be checked by Government Counsel (handing the document to Commission's Counsel).

41981 (RESP. EX. 3409-A to 3409-C, was offered and received in evidence.)

41987 The witness identified Resp. Ex. 3410 as a summary of Nebraska's monthly and annual shipments from the year 1922 to 1930, which shows the condition of its shipments during each of the months of the year 1929, and shows the conditions of its shipments during the period that the Iowa Highway business was being
41988 shipped. It is a sheet taken from a record that Nebraska keeps in the regular course of its business. It is an original summary taken from Nebraska's office record.

41995 (RESP. EX. 3410, was offered and received in evidence.)

42002 Q. Now, coming to another subject:

Do you recall whether or not the Nebraska Cement Company was a member of the Kansas City Cement Bureau prior to the formation of The Cement Institute?

A. Yes, I think they were.

Q. And so far as your experience was concerned, will you tell us what was the purpose of that Bureau and what the nature of its activities were?

A. Well, we were not very active in the Bureau, but we did attend some sessions that they had in Kansas City in which we took along our list of contracts, where they were located, and the quantities, description, and we checked those over with others who might have contracts on the same jobs for the purpose of eliminating duplications and triplications and even worse than that in some instances.

Q. Well, now, in connection with this checking of contracts, will you tell us how that was handled in case it was observed that there was a duplication, or a triplication, as you have described it?

42003 A. Well, usually, there was quite a little contest as to who should get the order. Naturally, we were interested in getting any business that we thought we had on our books, and we would make every effort to try to get the permission to ship that cement, so we would go back to the contractor who was involved, and practically have to re-solicit the business in order to get it. If we got a re-commitment from him at a later date we regarded that as final and we reported it to the Bureau.

Q. Was there ever any arrangement or understanding reached in connection with that as to which company would have the business where it was duplicated?

A. There never was because it was not practical to do so. The contractor always wanted to have his own say about that. He had his friends, and his reasons, and you usually had to go back to him and fight it over and quite often you would not have what you thought you had.

Q. Is that the way it was normally,—that it was left up to the contractor?

A. That is the only way we found we could handle it.

Q. Now, at these meetings,—you say you attended a few meetings of this Cement Bureau,—were matters of cement prices and marketing policies discussed at those meetings?

A. I never heard anything of that kind discussed at a meeting. I have heard admonitions to the contrary by counsel in charge of the meeting. Matters of credit
42004 were discussed there, we checked credit wherever we were interested.

Q. Well, do you have any recollection of the succession of the Kansas City Cement Bureau and then subsequently the Kansas City Division of The Cement Institute?

A. Yes, I have, at the time that the Code came in, I think that we withdrew from the Kansas City Cement Bureau. I do not mean—well, when it was originally part of the Institute, before Code days, I think we withdrew from it, and then due to the feeling of necessity of activity in connection with the Code we rejoined.

Q. Well, now, with respect to any meetings that you attended of the Kansas City Division of The Cement Institute, with respect to those meetings, apart from the time, perhaps, that there was discussion of the N. R. A. Code, was the matter of marketing policies and cement prices, things of that kind, discussed at those meetings?
42005 A. No, there were not.

Q. Now, is it correct, Mr. Hoenig, on this question of prices, is it correct that your company sells its cement in almost all cases at delivered prices?

A. Yes, sir; that is true.

Q. And, with respect to that, do you have any understanding or any cooperative arrangement with any other Respondent whereby Nebraska sells its cement in any particular way?

A. We have absolutely none. This has been the
42006 practice since I came into the cement business.

Q. You have not changed your manner of quoting prices since 1918 when you came with the company?

A. No, not a bit.

Q. Has the Nebraska Cement Company assumed any leadership in publishing its prices?

A. No, we have not.

Q. As I understand it, your company is a price follower?

A. We are a price follower, yes. We determine what the prices are and quote accordingly.

Q. Is there any arrangement or understanding to which your company is a party whereby it has agreed or it is understood that it will be a price follower?

A. Absolutely none. That is, we do not have to be—that it, of our own volition.

Q. And do you participate in the determination of the price policy of the Nebraska Company?

A. I do.

Q. And is that so since 1916?

A. Since 1918, or so.

Q. 1918, excuse me.

During that period, according to your best judgment as to the method that the Nebraska Company would follow in making its prices—has that been restricted or limited in any way?

42007 A. No.

Q. Do you depend at all upon getting information from competitors with respect to prices?

A. We do not depend upon competitors in the least in any way.

Q. Now, in determining what prices that the Nebraska Company will quote at a given destination, what is the first thing that you do?

A. The first thing that we do is to satisfy ourselves what the price is at the destination.

Q. And do you keep a record, any record, of prices that you find at destination?

A. Yes, we have quite a system of keeping up to the minute for ready reference the prices that we find out in the country, any changes anywhere in the territory that take place are recorded on cards. Those cards are kept there from day to day so that they are in such shape that we can refer to them specifically or generally for quotation purposes.

Q. Now, these prices that you find in the field, do you have any interest in the manner in which those prices are made up?

A. It does not make a particle of difference to us how they are made up. What we are interested in learning is what the price is, and whether or not we want to meet it or beat it.

Q. Now, let me call your attention to Commission's Exhibits 2223-A and B, and 2224-A and B. Will you

42008 tell me whether or not those are actual quotations of the Nebraska Cement Company?

A. Yes. These are evidently photostatic copies of our regular form quotations.

Q. And will you tell me whether Commission's Exhibit 2224-A and B is the form that you are currently using?

A. Yes, I think that is the form,—I would say.

Q. Now, is it the practice of your company to issue such quotations as these to your customers?

A. Yes.

Q. On what occasions, Mr. Hoenig, do you send out quotations such as these we have just been referring to?

42009 A. We send them out on request from time to time, and then we send them out when we find general changes or changes in part of the territory.

Q. For how long have you been sending out printed quotations of your prices to your customers?

A. Over 20 years.

Q. Does your company always adhere to the prices which it quotes on these printed quotations that you publish to your customers?

A. No.

Q. Will you tell me under what circumstances you do not adhere to them?

A. Those prices merely serve generally as a pattern. In other words, they give a general idea of what the price is for the benefit of the dealer and the contractor, but competitive conditions in our territory have been worse, probably, than any other place in the United States, and for the last 15 years or so, and it has necessitated our meeting prices that were other than and below those that are published by our competitors,—at least some of them.

Mr. MacIntyre: May we have the time fixed on this?

Mr. Werle: The witness said the past 15 years.

By Mr. Werle: Is that correct, Mr. Hoenig?

A. Fifteen years or more.

42010 Q. Tell me how you find out about these variations from the quoted prices, Mr. Hoenig?

A. We find out through the dealers,—if the dealers are involved, through the contractors, whom we cultivate very intensively, whom we regard as very good friends, so much so that they become confidential with us; sometimes we resort to methods that are used for checking purposes, such as making check offerings, testing the market with a price that we suspect is below the published price to see whether it appeals to the contractor, especially when that contractor has committed himself to us for all or part of the business and does not give it to us, which creates, as a result, a strong suspicion that he has a price. We resort to—we

check it in every way that we possibly can, through the dealers, for example, on the evidence that they are able to secure on the jobs that they are trying to sell, checking along with us, with their competition. We have many different ways that satisfy us that there are secret prices, just the same as any circumstantial evidence in a case in court will satisfy a jury to that effect.

Q. Well, now, with respect to these secret prices, do you find that they have been limited to any particular type of business, or what is the situation with respect to that?

A. Well, generally, they do extend into such cases, as in the cases where there is considerable tonnage involved, whether it is immediate tonnage or tonnage that is
42011 spread over the year. That applies to the larger dealers, the dealers who do considerable business in the larger cities, and we find it most extensively where large contractors are involved, in paving contracts, and things of that character. Among the small town dealers there is not very much of it because the business in those towns does not warrant fooling with it, I might say.

Q. I see.

Well, now, the record shows that the Nebraska mill at Superior, Nebr., was a base mill for a period of time. Is it a base mill at the present time?

A. No, it is not.

Q. For how many years has it now not been a base mill?

A. Oh, it must be more than 15 years. We had a period in there of a couple of years when there was a base—in fact, it is so far back that I do not even remember the circumstances—but we had a base in there that we put in, and we had to place it so high that it did not do us any good. It was mere fiction. The reason for that was that we could not put it low enough to make it worth anything to us, because the plant was located in a sparsely settled agricultural territory, with little access to the larger points of tonnage, no access to Kansas City, for example, no access to any of the larger points, excepting Omaha, Nebr., Lincoln,—not even into Des Moines, generally speaking, towns the largest of which, outside of Omaha and Lincoln, were not more than 10,000 and probably not more
42012 than four or five thousand people; so, consequently, when we took over this mill which had been in receivership we wanted to get out of insolvency, or at least we wanted to get out of that financial condition that they had been in. We put the mill on a base-like basis, and we

thought, at least for the time being, through the experimental period, that we better be secure and get all that we could out of that territory of limited production.

Q. Well, will you tell me—

A. So consequently—

Q. Excuse me.

A. —we had no base, and we merely met the prices that we found in the territory.

Q. Can you tell me whether or not, with this explanation that you have just made, that is the reason why you were not operating the Superior mill as a base mill in recent years?

A. It is to a large extent, but since the beginning of our operations another mill has come into the territory, which has also, not only due to its ability to produce, but its ability also to make competitive conditions unusually keen, has kept down our production.

Q. What mill are you referring to?

A. I refer to the Louisville mill.

Q. That is, Louisville, Nebr.?

A. Louisville, Neb. I also refer to a mill in
42013 Montana—I mean Wyoming, Laramie, the Monolith.

Q. Now, when your company gets word from the field with respect to an advance in price at some particular destination,—for example, will you tell us what you do before you determine whether or not you meet that particular advance in price at that point?

A. Well, we first want to determine whether or not that price is going to hold. We know that it is futile for us to quote prices that have not been published or established by, I would say, everybody that is doing business in the territory; so consequently we satisfy ourselves,—if a quotation has come out by any one company, we probably will want to check the field to see what the rest of them are doing and whether or not the raised quotation is holding. If we are suspicious that it is not going to hold, we withhold our quotations; but if we are satisfied that it is going to hold, and evidently does hold, then we go up and quote our trade accordingly; but in the meantime we will notify our trade of the price condition, and we assure them that they will be properly treated whatever happens to the market.

Q. Have there been price increases attempted in the

area where you sell cement which have not held, as you put it?

A. There have been one or two or three instances, but to name the exact time would be difficult for me to do, because they were back, oh, I would say, five or six
42014 years ago, or more.

Q. Now, in connection with finding or learning of a decline in price at a particular destination, what do you do in that situation?

A. Well, we have about the same policy, although we have got to be a little quicker on the trigger in the case of a decline, because usually the concern that is going to take advantage of a decline, for some reason or other, has some of its field men instructed to go out and solicit business on the strength of the decline, and tie it up sometimes before we have knowledge of it, so that it is important in the case of a decline to meet conditions as quickly as you can; otherwise you might sacrifice business.

Q. Well, now, in meeting changes in price at destination, what has been your practice as to the date upon which you make your new prices effective?

A. Well, we have no practice. It is just a matter of probably my own judgment in the matter whether or not I am satisfied that we should take the step one way or the other.

Q. Is that so with respect to both advances and declines?

A. Yes; that is true.

Q. Do you have any practice with respect to making declines in price retroactive for any definite period?

A. I don't think we have any definite, say, five-day period. We usually take into consideration the fair-
42015 ness of the situation and all the circumstances in connection with the case. Usually the dealers are ready to take care of themselves in the case of a decline, and if they think they deserve to get the benefit of the decline they will appeal to us for it and we will adjust it with them rather than lose their business.

Q. Who is—

Mr. Werle: I am referring now, Your Honor, to Commission's Exhibit 911-F.

By Mr. Werle:

Q. Who is Mr. F. A. Matthews?

A. Mr. Matthews, Mr. F. A. Matthews, was my assistant sales manager until about nine months ago, I think, until last September.

Q. What happened to him?

A. He is now deceased.

Q. Now, is it true that some of the prices that you find in the field relate back to some base figure?

A. Well, I do not recall whether you call it a base figure or not, but, however you characterize it, they reflect back to—at times to some point of shipment.

Q. Is that true—

A. At some price.

Q. Is that true as to all of the prices that you find?

A. Well, no. I should say that on a great many of our prices that they are in such confusion that it is
42016 difficult to say where they might have or how they might have been fixed. They are more or less made to fit the situation to get the business.

Q. And do you meet such prices whether or not they relate back to some base?

A. We do if we find them and are satisfied they are there.

Q. Now, have you ever given any instructions in your sales department that they should only quote and meet prices which related back to some mill base?

A. Oh, no. No. Our salesmen are instructed to meet conditions as they find them. If the situation is a serious one and involves considerable tonnage, we ask them to take it up with us by telephone and let us know what the situation is before they commit themselves.

Q. Will you look at this Commission's Exhibit 911-F, which purports to be a letter from your company to the chairman of the Code Authority, and tell me if you have any particular independent recollection of that.

A. I haven't any recollection of it at all. It is evidently a matter of routine that Mr. Matthews handled according to his own judgment.

Q. Now, let me show you Commission's Exhibit 2237, Mr. Hoenig, a photostatic copy of it. Tell me whether or not that is a letter that you wrote, or a memorandum that you wrote.

A. Evidently.

42017 Q. Is that a memorandum that you wrote?

A. It seems to be.

Q. Is that your signature?

A. It seems to be my signature.

Q. Who is George Short?

A. George Short is the sales manager of the Three Forks Portland Cement Plant in Montana.

Q. That is one of the Ideal affiliates?

A. Yes.

Q. And who is Mr. Lundy?

A. Mr. Lundy is his assistant.

Q. This memorandum, Mr. Hoenig, merely has a month and day, but no year. Could you help us fix the year of that memorandum?

A. I couldn't very definitely. It appears to reflect back about five or six years or more. Inter-office communication.

Q. Is there anything in the memorandum with respect to the subject matter which refreshes your recollection at all so that you could fix it at any particular time?

A. The only thing about it that tends to refresh my recollection at all is the job that is mentioned here, and the location, and that does not do much more for me

42018 than the memorandum in general.

Q. Would you say it was written in 1934, perhaps, or 1935?

A. Oh, somewhere along there. It is a number of years ago.

Q. Was it your custom to exchange price information with Mr. Short and Mr. Lundy, of Three Forks?

A. No, it was not.

Q. Well, Mr. Rockwell is mentioned in here. Who is he?

A. Mr. Rockwell was at that time the sales manager of the Ash Grove Portland Cement Company in Omaha.

Q. Is he still the sales manager?

A. No. He died some months ago.

Q. Well, was it customary for you or usual for you to check prices with Mr. Rockwell?

A. No, it was not. It was not necessary.

Q. Have you done it frequently?

A. Infrequently. Practically in no instances except-

ing—I notice that there is a suggestion of if there, but that is really out of our territory.

Q. Well, now, you say in this letter something about checking prices with Mr. Rockwell. Can you tell us what you meant by that?

A. Well, I think that Mr. Rockwell phoned me and asked me regarding the price at Cody, Wyo., which is a point outside of the territory that we usually ship into.

Q. And what did you tell him? What did you do about it?

42019 A. Now, I do not recall what the next step was, but—

Q. Well, perhaps—

A. I have mentioned, I notice in there, that the price was so much a sack, 83 cents at Cody, but just how I determined that I don't know.

Q. Well, will you just look at this memorandum, which is Commission's Exhibit 2237, and tell us the best you can about the circumstances under which you wrote that memorandum at that time? Tell us about that the best you can.

A. Judging from the first paragraph of this letter, there seems to be a discrepancy in the quotation from the Montana office itself to us. He evidently sent us—Mr. Lundy quoted a price of 83 cents, and it says here that Mr. Short quoted 80½ cents. That necessitated determining which was our price at that point. I am inquiring which was the correct price in sending this memorandum.

Q. And you are inquiring of Mr. Short?

A. And I was writing to Mr. Short for an explanation of the discrepancy in quotations that he had sent.

Q. Now, there is a Mr. Yant mentioned in there. Who is Mr. Yant?

A. Mr. Yant is a paving contractor in Omaha.

42020 Q. Where?

A. What is that?

Q. Where is he located?

A. In Omaha.

Q. And with respect to Mr. Yant, you state in there he has had many a price in the past. Will you tell me what you had in mind by that statement?

A. I had exactly in mind what I stated there.

Q. Well, what does that mean?

A. That means that there were secret prices made to Mr. Yant at various times over the last 15 years.

Q. Well, with respect to any of the subject matter of that memorandum, did you have any discussion or arrangement with Mr. Rockwell—did you come to any arrangement with Mr. Rockwell with respect to what prices you were going to quote in the future, or that he was going to quote in the future at any particular point?

A. No, we had no arrangement whatever.

Q. Now, do you recall the institution of the open price filing under the N. R. A. Code back in 1933?

A. Yes, I recall.

Q. Would you tell us what the Nebraska Cement Company did in connection with filing its original prices with the Code Authority? How did you go about that?

A. Well, we took the prices that we had on file
42021 in our card system there, just the same as for making general quotations to the trade, and listed it instead on a number of sheets and sent those sheets to the Code Authority as representing the prices that we were quoting in the territory.

Q. Now, Mr. Hoenig, perhaps we can cover these in one question:

42022 I want to call your attention to Commission's Exhibit 409-B, 409-E, 409-C, 409-F, and 409-H; all of which purport to be lists of destinations in the States of Nebraska, Kansas, Iowa, South Dakota, and Missouri, at which your company filed prices when the N.R.A. open price filing plan went into operation.

Will you tell me whether you have previously examined these Commission's exhibits so that you are able to state now whether or not the places at which your company, the Nebraska Cement Company, filed prices, as shown on these exhibits, were points at which you were regularly soliciting business and quoting on cement?

That is a pretty long question. Do you understand it? Do you have the question, Mr. Hoenig?

A. Yes. I was just checking it to see if it is correct. Yes, I have checked these, and they are a charted record of the places for which we filed prices with the Code Authority.

Q. And were those places at which you were currently

selling cement and quoting prices in the normal course of your business at that time?

A. Yes.

Q. In connection with the prices that you filed with the Code Authority at the outset, did you have any arrangement or understanding with any other companies as
42023 to what prices you would file with the Code Authority?

A. No.

Q. What was your understanding with respect to filing prices with the Code Authority, and subsequently with The Cement Institute for a while, as to the kind of prices that you can file and under what circumstances you could file the prices?

A. Well, my understanding was there was no restriction; that we could file any prices that we wished, provided we were willing to stand back of them and ship—I don't know as there was even that restriction.

Q. Well, during the N.R.A. Code—

A. There was no restriction that I could see. You could file any prices you wanted to, but, naturally, there was a moral obligation to ship when called on.

Q. Now, this Fort Peck Dam we talked about a while ago, how far is that dam from that mill?

A. Well, our mill is at the Kansas line and Nebraska. The Fort Peck Dam is in Montana. I should say that it would be seven or eight hundred miles.

42024 The witness identified Resp. Exs. 3411 A-G as actual contracts and contract forms which Nebraska used from 1918 until the present time. These forms are identical with the forms that Nebraska has used from the time that he took over the sales of the company over 20 years ago. Resp. Exs. 3411 A-B were originally used together, 3411-A being called Nebraska's long form of contract for specific work and 3411-B as its short form or triplicate dealer contract. These were used together in order to consummate a commitment on a specific job. The
42025 long form was used between the company and the dealer, and the triplicate form was used between the dealer, the contractor and Nebraska. Resp. Exs. 3411-A-B and 3411-B were temporarily superseded during the N.R.A. Code period by Resp. Ex. 3411-F. This form was known as "Sales Order for Specific Work", the order between the dealer and the cement company, which to their

idea was not binding between the contractor and the cement company; Resp. Exs. 3411-E and 3411-C were the same contracts that Nebraska originally used, and corresponded with Resp. Exs. 3411 A-B, the one difference being the reduction in size. Resp. Ex. 3411-F has been superseded by Resp. Ex. 3411-C and E about a year
42026 after the end of the Code period. Nebraska has not executed contracts on any forms except Resp. Ex. 3411 A to G from 1918 to the present time.

Nebraska had used three different forms; the original, a double form of the three-way contract, and the contract with the dealer; then, the intervening form used during the Code period; the return to the original form for the last four or five years. Nebraska has used that one right on down.

42029 (RESP. EX. 3411-A to 3411-G was offered and received in evidence.)

42032 Washington, D. C.,
Tuesday, June 25, 1940.

42038 LOUIS J. HOENIG thereupon resumed the stand and testified further as follows:

42041 *Direct Examination (Resumed) By Mr. Werle.*

Q. Mr. Hoenig, according to the Government's evidence, your company at one time—that is, the Nebraska Cement Company—made deliveries to customers' trucks at the mill; is that correct?

A. That is correct.

Q. And do you recall what period of time it made such deliveries?

A. I do not recall definitely, but it was back a number of years ago,—five or six years ago.

Q. And according to your Burns and Clark questionnaire answers, Commission's Exhibit 976-4-L, you state that on March 30, 1933, truck deliveries were abandoned. Does that accord with your recollection as to the date?

A. That is about it.

42042 Q. Can you tell us what was the immediate circumstance which caused you to stop trucking at that time?

A. The immediate circumstance was the fact that we had always objected ourselves, to trucking for a number of reasons. We had no facilities at the plant for trucking. Our system was arranged for carload loading by belt conveyor. The railroad tracks ran along either side of the packing plant and we were constantly switched for carload loading.

Q. May I just interrupt you there for a moment, Mr. Hoenig?

A. Yes.

Q. With respect to the physical problems that you had around your mill, my recollection is that this is covered in your stipulated testimony.

A. I think it is.

Q. So I think it would be better to omit any reference to the physical difficulties and tell us about any other difficulties which there were.

A. We had been having many complaints over the territory from our dealers regarding trucking; we found that dealers—

Trial Examiner Norwood: You need not go into any details about that trucking unless you have some details that are different from those that have been given here fifty times before with respect to the difficulties of other companies. Ask one or two questions to tie this in, and there is no use of our taking up any further time 42043 with it.

Mr. Werle: Well, I think, if Your Honor please, the witness is trying to answer my question to which there had not been any objection.

Would you read my question, please?

"Q. Can you tell us what was the immediate circumstance which caused you to stop trucking at that time?"

Trial Examiner Norwood: Go ahead. Answer that.

A. Well, the immediate circumstance was that we had been wanting to stop trucking and we found an opportunity to do so in that our competitors over the territory seemed to be stopping it.

By Mr. Werle:

Q. Do you recall what competitors had discontinued trucking or stopped it before you did?

A. Well, it would be the competitors in that more immediate territory, like Louisville and Kansas mills, Bonner Springs mill.

Q. You do not recall which ones, however?

A. I would not know which ones, no; just a general proposition. We discovered that they were discontinuing.

42044 Q. Mr. Hoenig, when you refer to Louisville, did you have reference to the plant of the Ash Grove Lime & Cement Company at Louisville, Nebr.?

A. I do, yes.

42045 Q. Well, perhaps, Mr. Hoenig; will you look at your answer to your Burns and Clark questionnaire, and that is Commission's Exhibit 976-4-L. You refer there to—lack of standard trucking prices demoralized the market. Will you tell me what you had in mind by that expression?

A. Well, what I had in mind there, it demoralized the market not so much as we were concerned as manufacturers, but among the dealers themselves, because trucking was being done from various sources, various mills, and at different amounts of revenue. Some of them would haul probably on their return trips for mere gas and oil; some of them, we do not know what they hauled for, what their rate was, and others would haul probably by subterfuge, would order cement for trucking to one point and would haul it into another. The result was that our dealers seemed to regard us as protectorates, protectors of their territory, more or less, and held us responsible for whatever happened, so that if one dealer or one individual or trucker did something that displeased them they naturally came back with a complaint on us.

Q. No, is it correct that your company added an extra charge for truck delivery at one time?

A. Yes, we did. We had a charge of 15 cents a barrel, I believe it was, to take care of what we regarded as miscellaneous extra costs and inconvenience, and so forth, and labor costs, and other details.

42046 Q. Do you recall how you happened to first adopt that extra charge for truck delivery?

A. Probably in the same manner that we adopted practically everything in the way of a new policy, or new price, and that was by finding that it had already been established satisfactorily in the territory by competition. I say "probably,"—that is the way we did it.

Q. Did you, during the period you were trucking, or at or about the time that you discontinued,—did you attend

any meetings with competitors in connection with trucking or discuss that matter?

A. No, we did not.

Q. Who made the decision to abandon trucking in the Nebraska mill?

A. I did.

Q. And did you discuss it or did you have any arrangement with any competitor companies with respect to abandoning it?

A. No, we had no arrangement whatever.

Q. During the period that you permitted delivery to customers' trucks, how did you determine the prices?

A. We quoted them and invoiced them on the same basis as we did on rail shipments, destination prices that we found in the territory, and allowed them the rail freight for trucking to that particular point.

42048 By Mr. Werle:

Q. I want to come to another question, Mr. Hoenig:

Does the Nebraska Cement Company use The Cement Institute freight rate books?

A. No, we do not; never have.

Q. Do you receive copies of the Institute rate books?

A. I do not think we do. I believe we had one copy of it at one time, during Code days, but I do not think we receive it because we told them we did not need it, don't want it.

Q. And does the Nebraska Company have some
42049 compilation of freight rates which it uses in connection with its business?

A. Yes, we have our own traffic department which furnishes us with freight rates, and we have a man in our own office who is well acquainted with rates, and who depends on the original tariffs a great deal when there is any question.

Q. At any time during the period when you have been with the Nebraska Company, have you used any compilation of freight rates other than a compilation made up by your own organization?

A. We have never used anything else but our own.

The witness identified Resp. Ex. 3420-A to Z-44, as a copy of one of the freight rate compilations which Nebarska uses. The copy came from the traffic depart-

42050 ment of Nebraska's Denver office. He has been receiving such compilation—"as long as we have been in business in Nebraska". This is a copy of Nebraska rate book No. 4, which was used by Nebraska during the periods shown and the dates shown on the book. Nebraska has books for other states also.

42051 (RESP. EX. 3420-A to 3420-Z-44, was offered and received in evidence.)

By Mr. Werle:

Q. Mr. Hoenig, just so we can understand this book, will you tell me about the figures which appear across opposite certain destinations down in the lefthand page,—those are freight rates in cents per hundred pounds; is that correct?

A. That is correct.

Q. And at the top of these pages there are certain symbols or abbreviations, the first being "POR" and the next being "SUP" and so on, continuing across the page. Can you tell us what those abbreviations are, from left to right,—can you tell us what they mean?

A. Those are abbreviations of the names of mills that compete,—that is, at some point or other; nt necessarily with Nebraska alone, but with our Ada mill.

Q. Well, what do the abbreviations mean? What does "POR", for example, mean?

A. "POR" stands for Portland, Colorado. "SUP" for Superior, Nebraska. "ADA" for Ada, Okla., the Oklahoma Portland. "BOE" is for Boettcher, Colo., one of our plants. "LS" is LaSalle, Ill. "MC", Mason City, Iowa. "KC", what we have known as Sugar Creek

42052 near Kansas City, "IOL" is Iola, Kansas. "RAP", Rapid City, S. D. "LAR", Laramie, Wyo. "LVN", Louisville, Nebr.

Q. And the points on the lefthand column running through are destinations; is that correct?

A. Destinations in the territory in the entire State, I would say.

Q. Certain rate figures in here, Mr. Hoenig, at one or two points, there is a freight rate appearing in red ink as distinguished from the others. Can you tell me what that denotes?

A. This book is in sheet form, so that it can be separated in a binder. Whenever there are any freight rate

corrections those are called to the attention of the office by designating them in red. The final sheet that we receive supersedes anything that we have had before.

Q. Now, you have explained how you determine the prices that you quote on your commercial business. Do you make any differentiation with respect to Government business in quoting prices?

A. No, we do not.

Q. Have you had occasion to quote the United States Government where land-grant rates were involved?

A. In two or three places, very seldom at other places than at Fort Riley, Kansas.

Q. Has the Nebraska Cement Company ever used what has been referred to in this case as the control clause?

42053 A. No, we have never used it.

Q. Now, you mentioned Fort Riley, Kansas. According to Commission's Exhibit 366-F, your company bid at Fort Riley, Kansas, a destination price of $2.15 in May of 1937, and it appears that you quoted no price f.o.b. your shipping point. Is that in accord with your recollection?

A. Well, it probably had done so.

Q. Will you tell me whether or not your company has received prior to July of 1937 invitations from the Federal Government calling for exclusive f. o. b. mill price?

A. I do not recall any. I have never been impressed with the fact.

Q. Now, with respect to this bid at Fort Riley, Kansas, in May of 1937 can you tell us why you furnished no f. o. b. mill bid on that invitation?

A. In the first place, we were not impressed with the fact that the Government was interested particularly in mill bids. It was my own idea that the Government was interested in buying the cement at the point of destination; of use, as low as it could buy it. We have no land-grant rate from Superior. We investigated through the Union Pacific and other railroads at various times, and found that there were land-grant rates from other mills to Fort Riley. There was only one way, therefore, that we could place ourselves in position to make an intelligent bid that

42054 meant anything to the Government, and that was to try to determine what the lowest combination from any mill that might be bidding, of the mill base and the land-grant rate, and that seemed to figure around $2.15 at

that point, which, by the way, gave the Government a price which was about 17 cents under our regular commercial price to a dealer at that point.

Q. Did you receive any award on this invitation, on this bidding?

A. No. I am quite sure we did not. I say that for this reason, that over a period of 20 years that we have been bidding, for some reason or other we have never had any award but one, and that was probably several years ago.

Q. Do you mean at Fort Riley?

A. At Fort Riley, yes.

Q. Do you recall whether or not any representative of the Government communicated with you or anyone in your Nebraska office with reference to your bid on this invitation?

A. I do not recall his taking it up with us. I may be impressed, probably, by what I had seen somewhere in the testimony that it was done, but I do not recollect that we were involved there.

Q. And do you recall having attended any conference with any representative of the Government with respect to this bid?

A. Any conference with whom?

Q. With any representative of the Government.

42055 A. No, no. We never had anything of that character.

Q. Now, with respect to your not bidding f. o. b. mill on this invitation, had that been your practice, the practice of your company, when you received invitations such as this one prior to that time?

A. It had been our practice as long as I have been in this business; over 20 years.

Q. Now, is there any influence,—anything which restrains you from bidding f. o. b. mill if you should decide in your own mind that you wanted to do so?

A. Well, there is no outside influence, no. It is purely our own local proposition with our trade that would govern as to whether we wanted to do it or not.

Q. Do you have any understanding or any arrangement with any other cement company with respect to bidding f. o. b. mill?

A. No, we have none.

Q. You mentioned a moment ago that you have communicated with certain railroads about land-grant rates.

Has that been your only source of land-grant information that you recall, or now have you done that?

A. Well, that is generally—we have had so little of this business that that has generally been the way that we have attempted to get it. Whatever we got we took for granted as worth using, and used it but we have never been very successful in getting business with it for some reason.

42056 Q. Now, let us call your attention to Commission's Exhibit 1339, which has been referred to as the Good Friday bid of 1938. Do you recall receiving that invitation?

A. Yes, I recall this bid.

Q. And is it correct that the Nebraska Cement Company did not submit a bid?

A. No, we did not bid a submit.

Q. Did you write any letter or make any response to that invitation?

A. No, we thought of it, for a while, of the advisability of writing a letter, but we finally decided that it would be just as well not to bid. We assumed the request had gone to a great many others, and that was our decision, anyhow, that we did not finally write the letter.

Q. Did you have any discussion with any competitor companies with respect to that invitation?

A. No.

Q. Now, can you tell me, or tell us, rather, just as concisely as you can, what were the considerations which caused you not to bid on that invitation?

A. The invitation seemed to be too indefinite for one thing.

Q. What did you have in mind?

A. It did not specify particular quantities. It did not specify definite delivery points or times of delivery, and it seemed to be broad enough in our interpretation,

42057 at least, to cover any Government business, any Government project for which the Government might choose to use this cement, which would carry us into the type of business that at that time was being taken care of by our dealers. Furthermore, we were afraid because of the penalty involved, and an experience that we had just before that with the Government on the Fort Peck Dam, that we might have some serious losses; because in the Fort Peck proposition we had deposited in a

Denver bank, about $250,000, I believe it was, to take care it was in escrow—to take care of the penalty. The Government did not ship when we expected they were going to ship, so consequently we were forced to ship it from Superior at a very low net, at times also when we needed the cement at Superior for other purposes, and we sacrificed I believe about 80 cents a barrel on what we shipped, so it was a very severe lesson for us.

Q. Well, did that enter into your consideration at the time you were considering whether or not to bid on this Commission's Exhibit 1339?

A. That would have been an important consideration to me.

Q. Now, did you know at the time you decided not to submit a bid what competitor competitors in your area were going to do with respect to this invitation?

A. Did I know what they were going to do?

Q. Yes.

A. I had no idea.

42058 Q. Did you have any communications with them with respect to it?

A. No.

Q. Now, will you look at Commission's Exhibit 1341, which is an invitation from the Procurement Division also in April of 1938, and tell me whether you recall having received that invitation?

A. I do not remember having received this one.

Q. Do you recall whether or not your Company submitted a bid on it?

A. No, we would not submit a bid at that point.

Q. What point do you have reference to?

A. Shoshone, Wyo.

Q. Why wouldn't you submit a bid at that point?

A. Because we found our freight rates are not satisfactory there. We do not solicit business there.

Q. How far away is that?

42059 A. Oh, I would say that Shoshone is seven or eight hundred miles.

By Mr. Werle:

Q. Let me ask you whether or not your company manufacturers this sulphate-resisting cement which was called for in this invitation?

A. No, we do not. We do not meet that speci-

42060 fication with our cement.

Q. Do you have any call for sulphate-resisting cement?

A. We have very little call for it,—up to that time, practically none.

Q. Could you manufacture sulphate-resisting cement?

A. We could manufacture it, but it would disrupt our entire policy and the quality and character of our cement to do so, because you have to introduce iron into it, and it darkens the color, changes the character of the cement, and often disappoints the trade who are not accustomed to the new type or quality.

Q. Well, have you had sufficient call for that kind of cement to cause you to make the necessary adjustments to manufacture it?

A. No, we have not. We would have to ship in ingredients that would be necessary to make sulphate-resisting cement, which would be iron ore. We have none around there.

Q. Let me refer you to Commission's Exhibit 1387; which refers to a proposal issued by the Procurement Division in May of 1938, which purports to have been sent to your company. Do you recall having received an invitation in May of 1938, from the Procurement Division?

A. We probably received that. Our name is here, but I have just a hazy recollection of it.

Q. Has your company sold any cement in Oregon?

42061 A. No, we have not.

Q. Have you made any effort to obtain any business in Oregon?

A. Never have, no.

Q. If it would refrsh your recollection,—if I suggest that that invitation referred to in Commission's Exhibit 1387 called for sulphate-resisting cement in Oregon, would that refresh your recollection at all, with respect to receiving that invitation?

A. No, no, it does not.

Q. Now, coming to another subject, Mr. Hoenig: Do you recall the so-called dealer's service payment plan which was introduced by the Lehigh Portland Cement Company at one time?

A. I recall the plan, but I do not recall just who introduced it. Was that where they allowed the 10-cent dealer discount?

Q. I have reference to the five-cent payment at the end of the year.

A. Yes, I recall that plan.

Q. Did the Nebraska Company adopt any such discount as that at that time?

A. No, we did not.

Q. Will you look at Commission's Exhibit 2239 and tell me whether or not you recall having written that letter?

A. I do not recall having written it, but evidently it is a letter that I did write.

42062 Q. Is that your signature?

A. That is my signature, that is our letterhead.

Q. Will you tell me whether or not that letter refers to this five-cent payment plan?

A. That is what it seems to refer to.

Q. Now, will you note that you state in that letter that your company and Ash Grove, I believe, had not changed your policy. Will you tell me how you found out or knew what the Ash Grove Company was doing?

A. Well, we are right there in Omaha, with both offices, and we are constantly in touch with our trade there. It is just a matter of constant contact there regarding other conditions, so we know from—

Q. Do you know from contact with Ash Grove?

A. No; I mean constant contact with our trade. We probably have 25 or 30 dealers in Omaha.

Q. Is that where your sales office is?

A. And our sales office is there, and we have a man who works Omaha all the time, and it has been our experience that it has been much more—

Trial Examiner Norwood: We will take a recess for five minutes.

42063 By Mr. Werle:

Q. Had you completed the other answer, Mr. Hoenig, or is there anything further you want to add to it?

Trial Examiner Norwood: I beg your pardon. I thought he was through there.

A. Yes. I finished that.

By Mr. Werle:

Q. With respect to the writing of that letter, had you had any information in advance from any competitor company as to what they were going to do with respect to the matter referred to in Commission's Exhibit 2239?

A. Well, the only information that I would have would

be based on reports from over the entire territory, not only in Omaha but all over the territory that we serve, or we have salesmen working, would be sending in whatever they learned or heard, and the dealers.

Q. My question was, do you have any information from competitors?

A. None from competitors, no.

42064 Q. Has there been any occasion in your experience at a time of some change in prices, or some change in policies, that you had any advance information from your competitors as to what they were going to do?

A. No. We have never had advance information from competitors. I think I testified last week that occasionally we were able to determine through what we had heard from the trade as represented to them by competitors' salesmen of probably a prospective drop or possibly a prospective advance, but we would get that through the trade.

Q. At the time of writing this letter, Commission's Exhibit 2239, did you discuss with any representative of Ash Grove as to what they were going to do about that, or what you were going to do about it?

A. No, I don't thing I did. There would not be any occasion for it.

Q. Now, let me call your attention to Commission's Exhibit 971-7-T and 7-U. Will you look at that and tell me if you recognize that letter.

A. That is a long time ago, but I recognize it, I believe, yes.

Q. Does it bear your signature?

A. Yes.

42065 Q. Will you refer to the second page of that letter, the paragraph marked 18-A-2, where you refer us to—where you use this language "from the time that the cement industry began to establish its policy of selling direct to the Government," will you tell me what was the basis for that statement about the cement industry beginning to sell direct?

A. Well, the characterization there of "cement industry" is merely my own conclusion based on what I found in the territory as being done and having been done by various companies.

Q. There is a reference in the third paragraph on that page, I think, to dealers resorting to every means, indi-

vidually and collectively, to influence a change in selling policies. Will you tell me—

A. At that time we were getting many complaints from dealers who were directly concerned in a sale in which there was a dispute as to the policy, and then they were also—it came to a point where we obtained so many of those at about the same time from various parts of the territory that I characterized it as organized, but, of course, that is merely a conclusion on my part that the objection was so general and broadcast that it amounted to a boycott,

42066 —whether I could call it that or not.

Q. I think you refer in there also to something about the lumberman getting together with the cement men nationally. Will you tell me what was the basis for that statement?

A. Well, that statement was entirely hearsay. It was based on what I think appears in the record here in the past, of what took place about the time that the Code was being formulated, during the period when there was a dispute about Article XI, and so forth, and a question as to what should be sold direct and sold through dealers, and that is the period that I was referring to.

Q. There is a reference with respect to your contracts in that also on the second page, in the third full paragraph. You say "There is still room for improvement with respect to that." Have you made any changes since the time of that letter?

A. Give me the last part of that, please.

Mr. Werle: Read the question.

Trial Examiner Norwood: Read the question.

(Question read.)

A. Well, I should say that I just cannot connect it up precisely, but the inference would be from a statement made here that we issued a letter to the trade possibly after this was,—at the time that I had this in mind.

By Mr. Werle:

42067 Q. Well, I think we can go back to that. I will have your letter here in a moment.

A. Really, what I had in mind was that we were undoubtedly receiving some complaints at the time that this letter or this report was made out from the dealers—I mean, of a similar nature.

Q. Now, will you look now at Commission's Exhibit 557, which is a copy of the N. R. A. Code of Fair Compe-

tion, and look at page 339, at the bottom, and over on page 340, referring to Article XI, and will you tell me with respect to paragraph 2 there at the bottom of the page, referring to sales to the United States Government, and tell me whether that had been your practice prior to the Code, and, if so, for how long a period?

A. It had been our practice where we had any government business, and has been our practice since I have been in the business, over 20 years.

Q. Now, with respect to the next breakdown there as to Government's. Will you answer the same question with respect to that?

A. Where is that?

A. On the bottom of page 339.

A. Yes, it is the same.

Q. Now, with respect to counties and parishes, can you answer my question with respect to that?

42068 A. We have never had requests by counties direct that I can recall to purchase cement.

Q. So that so far as that was concerned, you had no practice, is that correct?

A. We had no practice, and I do not recall any counties in our territory that purchased direct.

Q. Now, will you turn to page, and look at page 340, the first sentence at the top, referring to contractors doing such work, and will you tell me whether or not you had that practice prior to the Code, and, if so, for how long?

A. Yes, we had that practice in effect for the same period.

Q. Now, there is a reference in there to entirely within cities, towns, or villages. Did you have that practice also prior to the Code?

42069 A. Yes, we did. We protected our dealers in cities.

Q. Will you tell me the reason for that?

A. What is that?

Q. Will you tell me the reason for that?

A. I think it is in the last answer. We protect our dealers.

Q. Now, then, with respect to the next sentence there on page 340, referring to railroads and contractors doing work for such railroads, is your answer the same or different with respect to that?

A. The answer is the same.

42070 Q. Now, the next immediate sentence, beginning "The owners or contractors," referring to power development and matters of that kind. Will you tell me whether your answer is the same or different with respect to that?

A. The answer was the same.

Q. Now, with respect to the next sentence, concrete products manufacturers, et cetera, on page 340, will you tell me whether your answer is the same?

A. Originally we sold small products manufacturers through the local dealer, but later on when he became a factor in using cement we found that it was necessary to sell him direct.

Q. And had you had that practice for some time prior to the Code?

A. Yes.

Q. Now, then, with respect to the last sentence in that paragraph on page 340, with respect to commercial concrete mixing plants, with respect to them, had you had that practice prior to the Code, and, if so, for how long?

A. I just cannot place the time when concrete mixing plants became of any importance as compared with the Code days, but I am quite sure that they were in existence and operating before Code days, and we sold them direct. I might have to qualify that statement, however, by saying that some concrete mixing plants have developed
42071 themselves into a status of local dealers also, and we sell them for re-sale as well as for processing.

Q. Now, with respect to the matters in Commission's Exhibit 971-17-U, which we were discussing a moment ago, in connection with your sales policies and changes in it, difficulties with dealers. Did you attend any meetings of any cement manufacturers with respect to that subject matter?

A. No, we did not.

Q. Will you look at Commission's Exhibit 461, and tell me whether or not that letter ever came to your attention?

A. Well, I have a faint recollection of this letter coming to us, but I am not sure whether we got the letter or whether we got the information from the dealers, themselves.

Q. Well, can you tell me whether or not you, or any representative of the Nebraska Cement Company, attended any group meetings such as referred to by Mr. Runyan in that letter?

A. No, there would be no reason for our doing it.
42072 The witness identified Resp. Ex. 3421 A-B as an announcement of the Nebraska Cement Company. According to his recollection, it seems as if it is postdated a year. It should be 1935, according to the information here, and knowledge that he has of that period. It was issued after the Code, after the NRA was declared unconstitutional, he believes. He is quite sure it was in 1935, and Nebraska sent this announcement to the trade.

Q. Can you tell me the circumstances which caused you to announce this policy?

A. Well, there was a period in there after the abandonment of Article XI when nobody seemed to know what the policy was. Our dealers were not able to find out from anybody how cement should be sold or how they wanted it sold. We were not able to. For quite a period there we studied the situation and watched what was being developed in the territory, and finally we were rather glad to see somebody come out with some kind of a crystallized program that would throw some light on it. I have forgotten,—I do not know who it was,—but one of the cement
42073 companies from the East came out with a policy of that character, and that gave us something to think about and work on for our own trade, and that letter was the result of what happened at that time.

Q. When you say one of the cement companies from the East, who do you mean?

A. Well, I mean when I say "East," I mean somebody east of where we are located, possibly. I would not know who it was.

Q. But was it or was it not a company that was selling in the area that you were selling?

A. Oh, yes, they were selling in our area. They were competing with us.

Q. Now, before you issued this announcement, or at the time that you determined to issue it, did you have any discussion about the subject matter of it with other manufacturers?

A. No, with nobody but our trade.
42075 (RESP. EX. 3241-A and 3241-B was offered and received in evidence.)

By Mr. Werle:

Q. Now, the date of this Respondents' Exhibit 3241-A and B is March 5, 1935; is that correct?

A. Yes, that is correct.

42076 The witness identified Resp. Ex. 3422 as a Nebraska statement concerning selling policy, issued to the trade in April, 1935.

Q. And do you recall the circumstances under which you issued this statement of policy in April of 1935?

A. Well, there seemed to be a continuing dissatisfaction and some question among some of the trade continued after the former statement of policy, and for some reason which seems to be in the preamble in that letter we thought it best to do as we sometimes do regarding quotations, to refresh their memory regarding our policy.

Q. Will you tell me whether or not this statement,

42077 —preamble as you call it,—the first paragraph of Respondents' Exhibit 3422, states the facts as you knew them as of that day?

A. Those are the facts as I knew them. I think I have discussed them here in answer to one question. There was a period of flux in there, a period of confusion.

Q. Now, with respect to the issuing of this policy, did you attend any meetings with anybody or have any discussion with anybody? I am referring now, of course, to competitors, with respect to it.

A. No, I did not.

Q. And was this policy—that is, Respondents' Exhibit 3422, for identification—Respondents' Exhibit 3421-A and B, which is your former one in March, 1935,—were either of them issued by reason of any arrangement or understanding or agreement with any other competitor companies?

A. Absolutely not.

42078 (RESP. EX. 3422, was offered and received in evidence.)

By Mr. Werle:

Q. Now, Mr. Hoenig, this statement of your policy, Respondents' Exhibit 3422, refers to sales to federal emergency or unemployment relief agencies. As to that,

42079 when these emergency relief agencies began to buy cement in the area where you do business, what was the nature of the work projects which they handled?

A. The type of work, the nature of work, was similar, if not the same—I would say the same as what we had been selling in the past. The only difference was in the quantity, in the number.

Trial Examiner Norwood: Well, how did it run as to the volume?

The Witness: Well, the volume increased because of the Government spending was the so-called pump priming character.

Trial Examiner Norwood: How did the size of the orders compare?

The Witness: Do you mean the volume, or—

Trial Examiner Norwood: In carloads or less than carloads.

The Witness: Well, they were generally—I won't say that; that would be a little difficult to answer because I would say that most of it, probably 85 percent of it, was carload business, and the other would go to
42080 some dealer who undoubtedly would handle it. Of course, it all went to a dealer, but we would not know whether it went direct as a carload onto the job or whether he distributed it sack by sack.

By Mr. Werle:

Q. Well, what I had in mind there, Mr. Hoenig, was whether or not the emergency relief projects, federal or State, injected some new character of work that had not existed before.

A. They did not,—not in our territory. The type of work and the character of work was the same as it was in former years. There was simply more of it.

Q. And had you been selling that same character of work prior to the institution of these relief agencies?

A. Yes, we had.

Q. And would you tell us how you had been selling cement for that character of work prior to that time, whether you sold it direct or whether you sold that to dealers?

A. We sold it through dealers.

42081 By Mr. Werle:

Q. And for how long a period, if you can recall?

A. Oh, for over 20 years, since I have been in the business.

Q. Now, with respect to that subject matter, did this April, 1935, policy bring about any change in the practices of your company?

A. No, it did not.

Q. Now, I would like to come back again, Mr. Hoenig,

to your letter to Dr. Byrne, which we were talking about before, Commission's Exhibit 971-17-U, and I ask you, you will recall, whether or not you had made any changes in your practices or policy with respect to marketing since this letter of July of 1935, and you answered that you were not sure, but whether you had issued a subsequent statement of policy after that. Now, will you refresh your recollection from Commission's Exhibit 3422 as to that, and try to answer my question?

A. Evidently this statement of policy was issued in April while the letter is dated in July.

Q. Now, in connection with that, do you recall whether or not subsequent to July of 1935 you had made any changes in the methods which you outlined in Respondents' Exhibit 3422,—have there been changes?

A. No, we made no changes. What I referred to in that Byrnes letter were the conditions that brought about the issuing of this policy later.

42082 Q. Now, let me call your attention to Commission's Exhibit 2713-5, which is an invoice, one of the invoices of your company, and I notice on that invoice the estimated freight is marked "None" and on the others there is always a figure shown. Can you explain that?

A. That is a switching charge, I believe. No, that is a discount,—that is a discount on 25 barrels there.

Q. I have reference to this estimated freight as "None."

A. Oh, I see. There would not be any freight on that, being at the mill point, Superior.

Q. Well, is there any switching charge involved?

A. There is a switching charge which we handle directly with railroad company.

Q. Is it correct, then, that you absorb that switching charge?

A. We absorb any switching in there.

Q. Now, will you look at this entire exhibit, Mr. Hoenig, Commission's Exhibit 2713, 1 to 24, and look at those invoices, and tell me whether or not the prices shown on those invoices were the actual amounts paid by the customers in each instance?

A. No. 1, right there—do you want me to go through all of them?

Q. I do not think it is necessary to take them one by one. Will you just tell us—

A. Just make a general statement? My answer
42083 would be that they do not in all cases.

Q. What is the explanation for that?

A. The explanation for that is that we found secret prices being made in Omaha by our competitors.

Q. And did you or did you not meet them or attempt to meet them?

A. And we had to meet them in order to sell any cement.

Q. And with respect to what destinations in here, if any, does that refer?

A. That refers particularly to such large consuming points as Omaha.

Q. Mr. Hoenig, there is some indication from one or two of these invoices that you made shipments direct to the C. C. C. district quartermaster in Omaha. With respect to those shipments the dealer in each instance I think was J. B. Watkins Lumber Company in Omaha. Is there any service that the dealer performs in connection with sales such as that?

A. I should say that the dealer performs about the same service as he does for any other individual or concern, because in the purchasing for C. C. C. camps, they have lumber and brick and plaster and other building materials that they require, and they require the service on it as they need it, rather than in carloads. They may not have storage facilities. There may be other reasons and other advantages why the local dealer is in position to serve them and save them money.

42084 Q. Mr. Hoenig, I would like to call your attention now to Commission's Exhibit 2437, which represents bids to the Missouri Highway Department in March, 1929, by your company among others. It appears from this tabulation that the Nebraska Cement Company bid only in divisions 1, 2, and 3, and did not bid in any of the other divisions.

Can you tell us why that was?

A. That was because we do not regularly solicit business in the territory in which we did bid here, and freight rates were not regarded at the time as favorable enough for bidding all over the State.

42085 Q. And can you tell me generally with respect to highway department invitations such as represented by this Commission's Exhibit 2437 how do you determine the prices that you quote at points listed?

A. We determine them from the reports of the men in the territory—that is, the card prices that we have in the office.

Q. Is it correct, then, that they are your commercial prices, published prices, to those points?

A. Those are prices that we use, yes.

Q. With respect to Commission's Exhibit 2437, these Missouri bids in March, 1929, did you have any arrangement with any other companies as to the points at which you would or would not bid?

A. Oh, no. That was left entirely to my judgment.

Q. And is the same thing true with respect to the prices that you quoted?

A. Yes.

Q. Now, will you refer to Commission's Exhibit 2438, which purports to represent further bids to the State of Missouri in December of 1929, and again it shows that the Nebraska Company only bid at a few points. Is the explanation the same with respect to that?

A. The explanation would be the same, yes.

Q. And with respect to having had any under-
42086 standing or agreement on the points at which you would or would not bid, is your answer the same or different with respect to that?

A. The answer is the same.

Q. Perhaps we can jump some of these,—if Your Honor will bear with me just a moment.

Trial Examiner Norwood: Go ahead.

Q. Now, will you look at Commission's Exhibit 2439 and Commission's Exhibit 2442, representing Missouri bids received in January of 1931 and November of 1932. It appears with respect to those that again you did not bid at all points. Now, with respect to the places at which you did bid or did not bid, and with respect to the prices which you quoted where you did bid, do you have any understanding or agreement or arrangement with any other companies?

A. No, I did not.

Q. And did you select the points at which to bid in the same manner as you have already described?

A. Yes.

Q. And your prices as—

A. In the same manner.

Q. The same,—the commercial prices?

A. Yes.

Q. Now, will you look at Commission's Exhibit 1849-A to C, which represents a record of bids received by the State of Iowa, and again there are certain points at
42087 which you did not bid. Are your answers the same or any different with respect to that bid than they were with respect to the Missouri bids we just discussed?

A. The answer would be the same.

Q. In other words, those are points where you do not solicit business?

A. The points where we haven't bid we do not solicit business.

Q. And with respect to agreement or understanding or arrangement concerning the points at which you did bid or did not bid, concerning the prices which you did quote, was there any such arrangement or understanding?

A. There was no arrangement.

Trial Examiner Norwood: Well, was that decision made solely on the basis of reduced mill nets?

The Witness: Not reduced mill nets, that is positively reduced; it was on the basis of mill nets as they exist.

Trial Examiner Norwood: Yes. I mean on the—

The Witness: It was the revenue to us, if we shipped into the distant territory we were interested in.

Trial Examiner Norwood: Your basis of making—the business was not attractive to you.

The Witness: That is it. Furthermore, we did not work that territory regularly.

42088 Trial Examiner Norwood: Would that make any difference in a large bid?

The Witness: Well, it might not, but we generally are more interested in bidding in territory that we are well acquainted with.

By Mr. Werle:

Q. Now, just to save time with respect to Commission's Exhibit 1851-G, H, and I, some further Iowa bids, will you tell me whether your answers are the same as they were with respect to the Missouri bids, Commission's Exhibits 2437, 2438, and 2439?

A. Yes. The answers would be the same. Are these the same bids,—these are parts of the same bids or different?

Q. Yes, they relate to the same letting.

A. Yes. Well, the answer would be the same.

Q. Now, with respect to bids that your company has submitted, such as these to State highway departments or federal government or other public agencies, has your company, the Nebraska Company, had any foreknowledge as to what other companies would bid on such invitations?

A. No, we have no idea.

42097 Q. Mr. Hoenig, in any one year from 1929 to 1937, state whether or not—well, first, can you tell us in any one year during that period what percentage of your shipments was made direct to the United States Government?

A. You mean in any one year?

Q. What was the greatest percentage during any one year?

A. Well, the percentage was what we would regard, not more than nominal, maybe 2½, 3 percent.

By Mr. Werle:

Q. And during the same period can you give us some idea with respect to your shipments to railroads?

A. The railroads amounted to approximately nothing, I would say half of one percent, maybe less than
42098 that, probably a few thousand barrels a year, in most cases.

42100 Q. Mr. Hoenig, let me show you Commission's Exhibit 561, which purports to be a Compendium of Established Terms and Marketing Methods. Do you recall having seen that?

A. I think it came into the office at that time—that is, I am not sure just when.

Q. Well, did you distribute that to your sales organization?

A. No, we did not distribute it, and we did not use it.

Q. Did you attempt to operate your business in any sense in accordance with the provisions set forth in this document?

A. No, we did not. We did not have this document in mind at all in carrying on our business and business policies. We had what we had outlined ourselves, and if this in any way corresponded, that was something that we did not pay any attention to.

42101 The witness identified Resp. Ex. 3424-A to R inclusive, as a list in alphabetical order, of the points in Kansas and Nebraska and other territory which Ne-

braska served, giving the delivered prices of cement in both cloth and paper. The company furnishes its salesmen with such lists and Resp. Ex. 3424 A to R is a copy of such a list. It is probably obsolete now on account of the date, but it is the same type Nebraska uses now, brought up to the minute if there are any changes. Nebraska has been furnishing such lists for six or eight years.

42102 Trial Examiner Norwood: Are those correct prices as of any particular date?

The Witness: They are correct prices as of the date—that is, they are prices that we would have taken from our card system as of the date shown on there, 1/1/37, I believe it is. I say correct,—they are prices.

Mr. Werle: I will say, Your Honor, that I have not offered it for the purpose of showing the prices; merely to show the kind of information that the salesmen were given by the sales department of this company.

42103 Trial Examiner Norwood: This is all the information they had? In other words, they did not carry freight books or any thing like that?

The Witness: No, they did not carry those. They just carried that information.

Trial Examiner Norwood: This is all that they carried?

The Witness: Yes.

(RESP. EX. 3424-A to 3424-R, was offered and received in evidence.)

Cross-Examination by Mr. MacIntyre.

Q. Mr. Hoenig, your method—going back to this exhibit which has just been received, Respondents' Exhibit 3424-A to R, your price list.

A. Yes.

Q. Your method in determining the prices that appear on that list as well as the price card from which it was copied, and your methods in copying your sales, determining them, have not changed in the past 10 years, have they?

42104 A. No, I don't think so.

Q. Well, you say you don't think so. You do know whether or not any of those methods have changed, don't you?

A. Well, this is merely a transfer of information that we have on our cards in the office.

Q. Well, has your method in determining and recording the prices, as is shown on those price cards and the price lists, I have just referred to, have those methods changed in 10 years?

A. Fundamentally, no.

Q. Well, in any essential particular, have they?

A. I do not know that I could point out any change in routine.

Mr. MacIntyre: With respect to the witness' answer on that, if Your Honor please, for Your Honor's information, I would like to call your attention to Commission's Exhibit 3176-W.

Trial Examiner Norwood: Do you have a copy of it there?

Mr. MacIntyre: Yes (showing the exhibit referred to to the Trial Examiner).

By Mr. MacIntyre:

Q. Did you prepare the questionnaire reply or the reply to the questionnaire of the Federal Trade Commission in 1931 that was sent to the different companies in the Ideal Cement Company group?

A. I believe I did.

42105 Q. That is, you prepared the one for the Nebraska Company?

A. There might have been some detail in it that I referred to others, but generally speaking I prepared whatever I knew about it.

Q. Mr. Werle showed you this portion of it; when you first started your examination, I believe, and it contains the names and addresses of the officers and directors.

A. Yes.

Q. Do you recall that?

A. Yes.

Q. And I believe you told him you prepared that portion of it?

A. Well, I do not know—I do not believe I said that.

Q. Well, what are the facts on that?

A. That probably that part of it is just what I was referring to in my answer; I probably left that to the general office to prepare.

Q. Now, as to the answers to the other questions concerning the production and shipment, and the methods of

sales and marketing policies, you prepared your answer to that, did you? That is, to those questions?

A. Well, I qualified that in the way that I did the answer to the last question; whatever I knew of it, I would prepare it.

Q. But they were all prepared under your supervision?

42106 A. Well, they were prepared so far as our office was concerned, and the furnishing of material that we had in our office, under our supervision, but if we thought that our general offices had information more reliable; for instance, regarding the officials of the company, we would leave it to them.

Q. But wherever that you could furnish information, you did?

A. I did.

Q. Wherever your general office furnished general information, they furnished it from facts within their possession?

A. If we had the information in our Omaha office, we probably used it.

Q. Your explanation of this answer that you gave Professors Clark and Burns, that you told Mr. Werle, concerning the reasons for your discontinuance of trucking, the one that states that you abandoned trucking because of lack of standardization prices demoralized the market, you told him that it did not demoralize the market so much so far as you were concerned. Do you recall that answer?

A. I think so.

Q. Well, just how did it demoralize it in any way in so far as you were concerned?

A. Well, in so far as we were concerned, if it demoralized it among the dealers that we sell and the contractors that we sell, of course it indirectly at least affected us.

42107 Q. Indirectly that way affected your price structure, didn't it?

A. Well, it did not affect, necessarily, our price structure, but it affected the destination prices that were being made at different points in the territory, the dealer competition among themselves, and so forth.

Q. And is it your testimony now that that did not in any wise affect your price structure?

A. Well, I would say that in some cases it forced us, I could not attribute it to trucking, necessarily, but in some cases we had to meet competition for one reason or another, and it would be hard to say whether it was for trucking or other reasons. It might have been arbitrary reasons on the part of the dealer.

Q. Just why were you so concerned about this demoralization in delivered prices that you spoke about in your reply to the Clark and Burns questionnaire, question 10-B, the second part of that answer as is appearing on Commission's Exhibit 976-4-L?

A. We were concerned in it naturally because if it caused a lot of friction and dissatisfaction among the trade, why, naturally, the trade were complaining to us, and we always used our own best efforts to do what we can to cooperate with our trade, keep them satisfied.

Q. Is it your testimony, Mr. Hoenig, that the
42108 member of the trade, a dealer who sent his truck or had a truck to come to your plant, and picked up cement, and then demoralized the price complained to you about his demoralization of the price?

A. No, he would not do it, but—

Q. Who did?

A. One of his competitors.

Q. One of his competitors?

A. One of his competitors' dealers might do it.

Q. And you were anxious to correct this demoralization in the competition of the dealers?

A. Well, you may use the word "correct," if you wish to. What we were interested in was avoiding the complaints that were coming from our dealers regarding this situation which trucking seemed to have been contributing to. We had some dealers that, without saying a word to us, refused to buy our cement because another dealer would truck into his immediate territory where he had a plant, and where the first dealer had no representation.

Q. How did you treat the complaints of the dealers whom you shut off by giving cement by truck delivery at that time?

A. How did we treat the dealers?

Q. The complaints from dealers who you shut off from securing cement in that way?

A. Some of them, if they were severe enough and we could not prevail upon them to keep in harmony with
42109 their competitor dealer, why, we might refuse to sell them; we might sell them on condition that they would use the cement only in the territory—in the district where they had been accustomed to.

Q. And not cut prices?

A. Well, we did not necessarily—the matter of his cutting prices, that was a matter of local competition. We did not always know about the price situation, but what we were particularly interested in, as I said before, was in not dictating as to how they should sell or how they should do business; but in trying to avoid the complaints that were coming to us from whatever source they might be, so that we would not be blamed for it.

Q. But according to your explanation here by your reply to the Clark and Burns questionnaire, Commission's Exhibit 976-4-L, you were interested in this local competition of demoralized delivered prices?

A. We were interested, as I say, in so far as it saved us from the embarrassment and the complaints of the dealers that we were doing business with.

Q. Well, just why was it necessary for you to interest yourself in these demoralized delivered prices, Mr. Hoenig?

42110 The Witness: I have no explanation excepting that the situation reflected from the dealer onto us and created complaints and embarrassment that we were anxious to avoid. We did not care how much they competed, because—

Trial Examiner Norwood: Well, you have explained that several times.

The Witness: Yes.

By Mr. MacIntyre:

Q. Isn't it a fact, Mr. Hoenig, that dealers, some of the dealers who had not been trucking cement from your plant, had asked you for lower prices so that they may meet the competition of the cut prices of the dealers who had been trucking?

A. I do not recall any such request as that. I am quite sure we had none.

Q. Is it your testimony that you had no complaints from dealers of that nature asking you to lower your prices so that they could meet the competition of other dealers who had cut prices that were trucking?

A. No. I do not think we had a complaint of that kind. Our complaints were more constructive than that. They wanted to avoid the situation among themselves if they could.

Trial Examiner Norwood: You had complaints
42111 from dealers who were being undersold, did you not?

The Witness: Well, I do not know—yes, I presume that they were being undersold by their competitors, that was one of the things, and they were also being competed against in their own immediate territory where another dealer had no representation, and had not formerly been selling cement.

Trial Examiner Norwood: Well, in that case, then, they would suggest that you stop selling to the truck?

The Witness: Yes.

Trial Examiner Norwood: Or the other fellow stop selling the other fellow's truck, and they never did suggest then that you sell their truck in order to meet it; is that correct?

The Witness: No, they never asked us to reduce prices, on anything of that character.

42112 By Mr. MacIntyre:

Q. Do you have any further explanation as to this indirect effect of these demoralized delivered prices on you about which you started to tell us?

A. Well, the only effect that I had in mind when I made that statement was the indirect effect,—was in the
42113 nature of these complaints that were coming back to us.

Q. From the dealers?

A. Yes.

Q. Whose prices had been affected?

A. Yes.

Q. By cut prices?

A. By the effect on the situation of the dealer.

Q. What indirect effect would that have on your prices?

A. It had no effect on our prices whatever, don't understand that. What I was referring to by the indirect effect

was the reflected attitude of the dealers on us. In other words, in the nature of complaints. They were complaining to us about this situation.

Q. What was the tendency of those complaints,—to boost, to cut your prices, or to put pressure on it for a downward trend?

Mr. Werle: I object to that. The question has already been answered half a dozen times.

Trial Examiner Norwood: We have gone over that.

By Mr. MacIntyre:

Q. Will you please explain to us, Mr. Hoenig, the nature of the complaints rather than just tell us that you had complaints.

42114 A. I think I have answered some of them already. They were instances where, for example, a truck would come into the plant and get an order for cement on the representation that it was going to some dealer, and it would be hauled into an intervening or outlying territory in which that dealer had no representation, and had probably never sold cement for, and proceeded right next door to the plant of another dealer who was buying his cement from us. We had instances where we found that the second dealer was affected by that.

By Mr. MacIntyre:

Q. By a cut price?

A. I do not know whether it was a cut price, but it was a fact that in some way he got in there and sold that cement, and it may have been on the price on cement, or it might have been in the way that he handled other materials, and in connection with it; we do not know, but the result was that we got either an open reaction from that second dealer or in some cases he would simply, without our even knowing it, for some time, fail to purchase cement from us and begin to buy from somebody else, not even mentioning it to us.

Q. Who would give him trucking or a lower price?

42115 A. They would not give him necessarily lower prices, but he was sore at us, and in retaliation he would say, "Well, if you fellows are going to do that kind of stuff"—talking to himself—"I will buy my cement from the other fellow." I would not know what he was doing. I would find out later on that I lost an account.

Q. Was that competition between the dealers that reflected itself back to the manufacturers, was your real interest in this demoralized delivered price condition; is that correct?

A. That was one of them, and it was the fact that we were in a position where it was reflected back on us and damaging our business.

Q. In the manner you described?

A. Yes, and maybe in other ways. It was not necessarily price. It was the loss of business we were suffering.

Q. Mr. Hoenig, when you replied to the Clark and Burns questionnaire, Commission's Exhibit 976-4-L, you set forth your reasons as to why you abandoned trucking, can you explain why that you did not at that time set forth all of these reasons for abandonment of trucking which you have put in to your stipulated testimony, which begins in the record beginning at line 10, page 49164, and running through to the middle of page 49165?

A. I would have to look over the Burns report and see.

Q. Well, here is the record, and the Burns report for your information; you may see them both.

42216 A. Have you my answer there; that is all I am interested in, my answer.

Mr. Werle: May I ask Mr. MacIntyre to call to the witness' attention the part.

The Witness: What is the question here now?

Mr. Werle: On the Clark and Burns questionnaire, applying to this case.

By Mr. MacIntyre:

Q. I am calling the witness' attention to the question in the Clark and Burns questionnaire that asked him for his reasons for his discontinuance of trucking. The questions are set forth on Commission's Exhibit 976-4-L, and they also carry the witness' answer that he gave at that time, and my question now is why it is that he did not include all of these reasons that he has included in his stipulated testimony in this case.

A. Well, the reason undoubtedly is; if I have not given them, I cannot say just exactly what I did have in the Burns reply, or the questionnaire, but the reason is that I undoubtedly did not give it quite as much attention, but there is no question but what the answers that I gave in

this testimony here are the reasons and the answers, and I stand by them now.

Q. In other words, when you say you did not give it quite as much attention, you mean to say you have
42117 given your testimony in this case a lot more consideration before actually presenting it here than you did your answers to the Clark and Burns questionnaire back in 1935 on that subject; is that correct?

A. I do not know as I answered in that way. I just was not impressed, probably, when I answered the Clark and Burns questionnaire, and it may not be that some of these things came to me. I had so many questions to answer at that time that I do not see why there is any difference in the actual condition, whether I recalled them or expressed them at that time, or now. I know that those were the conditions as they were at that time, and I am ready to swear to them right now as such.

By Mr. MacIntyre:

Q. You, as sales manager for the Nebraska Cement Company, operate, and have for the past ten years, operated under the general supervision of Mr. H. O. Warner, the general sales manager of the Colorado Portland Cement Company, haven't you?

A. No, we never did. Mr. H. O. Warner holds the same position with the Colorado Portland Cement Com-
42118 pany that I do with this company.

Q. Is it your testimony Mr. H. O. Warner has no supervision over you at all?

A. Mr. Warner, as such, has no supervision, no; Mr. Warner—

Q. Who is he?

A. He is vice-president and sales manager of the Colorado Portland Cement Company.

Q. Who is your superior?

A. My superior is the president of the company, Charles Boettcher.

Q. Do you know in what way that he is aided in supervising you by the efforts of Mr. H. O. Warner?

A. Mr. Boettcher?

Q. Is aided by Mr. Warner.

A. Is aided by Mr. Warner?

Q. Yes.

A. The only way that I could think of would be that possibly Mr. Boettcher, having Mr. Warner at his side

there in Denver, might, because of his experience in general in the business, call on him for help occasionally, but so far as jurisdiction is concerned I do not agree that Mr. Warner has any jurisdiction over me.

Q. You know it to be a fact that Mr. Boettcher frequently secures consultation with and advice from Mr. Warner on sales policies, don't you?

42119 A. I do not know it, no; I do not know it. All I can say is what I said in that last answer, that they are there together in the same offices in Denver, and it is only natural that occasionally Mr. Boettcher might have a conference with Mr. Warner, knowing of his similar position in that territory.

Q. Mr. Hoenig, is it your testimony that you do not know that Mr. Warner discusses sales policies with Mr. Boettcher, and Mr. Boettcher discusses sales policies with Mr. Warner?

42120 The Witness: Strictly speaking, I do not know. I am merely assuming, as I told you before, that because of their location and their relationships, that they probably do, but I do not know. I never see them. I am not sure.

By Mr. MacIntyre:

Q. Do neither of them ever write you to the effect that they had discussed it—that is, their sales policies?

A. Well, I would not say. I cannot recall that Mr. Warner ever wrote me about a sales policy. That does not mean that I deny that he has, but I cannot recall at any time since I have been in the business that he has directed me regarding any sales policy. He may have asked me a question about it, and I cannot even recall that. I do not remember that Mr. Boettcher ever discussed with me a sales policy.

By Mr. MacIntyre:

Q. Mr. Boettcher, or—

A. Mr. Boettcher. They have left that matter entirely to me.

Q. And never communicated with you about them in 10 years; is that correct?

A. Well, as I say, I do not want to be so positive about these things, that there has never been an exception

42121 to the rule, and I am just giving you my version of it in a general way as to what it is, generally speak-

ing. You may have something in your record there that you are going to introduce that may contradict my statement. I do not want to make a statement as positive as that, because I will admit that there might possibly have been some exception here of some kind. I am making you a statement now that is general enough to warrant the position that I have taken here, that I have run this business.

Q. Well, I am just merely trying to get the facts from you as you know them.

A. I am giving them to you as I know them.

Q. Now, on this question of land-grant rates, you told Mr. Werle that you received information from the railroads on land grant rates.

A. Yes, sir.

Q. Is it your testimony that you did not receive any land-grant-rate information from the office of Mr. Boettcher, through the person of Mr. Martindale, the traffic manager in that office?

A. I would not dispute that. I do not recall that we have because on my own direction for the last number of years; whenever a case of that came up we called the railroad company or we would take the last bids that we made on a job like that, which was, generally speaking, in
42122 almost every instance Fort Riley, and we would attempt either on the strength of what we would learn from the railroad company or the last bid that was made, to make another bid, which, as I said before, was usually futile. We never got that business.

Q. In that connection, you sought the assistance of Mr. Martindale, the traffic manager?

A. No, we did not.

Q. In the office of the Ideal Cement Company?

A. No, we did not secure the assistance of Mr. Martindale. Now, it may be at some time or other Mr. Martindale sent some information about land-grant rates that he had secured somewhere, but if he did it would be only natural because we depended on that department to keep us posted on freight rates, but, as I say again, I do not recall having such information as that.

Q. You did depend upon Mr. Martindale for freight rate information?

A. Well, we depended upon Mr. Martindale's office. Mr. Martindale has not been with the company for some time, but we did depend on his office to a certain extent, I

will say. I won't say altogether. They volunteered to furnish these freight rate sheets that we testified to this morning, and other incidental freight traffic information, but we do not depend on them altogether, because, as I stated this morning, we have a very efficient man in our office on
42123 whom I depend quite a little for information like that.

Q. You did also receive from The Cement Institute certain communications concerning land-grant rate information, didn't you?

A. Well, I had that in mind a moment ago when you referred to Mr. Martindale. I do not know whether we ever secured anything from The Cement Institute, but my recollection is that they did have something of that character that they published at one time, but we had so little use for land-grant rates, Fort Riley being the only instance, and we never could depend on any rate that we got from any source down there on that business. It did not seem to make any difference how we bid or what we bid, we did not get the business anyhow. That was because the Government purchasing agent had a way of his own of awarding that business, which, frankly, we did not think was just right.

Q. That is, you did not always have the——

A. Did not usually have the rate; we did not have, usually, have the price. We do not know what was the matter, but we did not have the right price, we know that, but then if we did have price that looked reasonable after we checked up finally we found out that the purchasing agent would have awarded the business on some other kind of private award, to some other company, instead of giving us an opportunity to bid on it again.

42124 Q. Now, when you told Mr. Werle that you had attended no meetings with your competitors at which the imposition of this 15-cent charge on trucking cement was discussed, you did not mean to imply through that statement that Mr. Boettcher and other aids of Mr. Boettcher in the Denver office of the Ideal group had not attended such meetings, did you?

A. No. As I said a while ago, I do not know very much about what those men do out there.

Q. But you do get your instructions on policy at times from Mr. Boettcher?

A. As I told you, I believe, a few answers ago, Mr.

Boettcher—I do not remember that Mr. Boettcher has ever written me about a matter of policy. His letters usually indicate that he wants me to get all the business that I can. He does not designate policy.

Q. He has determined whether or not you would become a member of The Cement Institute?

A. Well, I would not say that he determined that, either, but I know that I did not determine it.

Q. You know that you did not?

A. I know that I did not, no. I do not know who did.

Q. Who determined whether or not you would become a member of the Portland Cement Association?

42126 A. I cannot answer that positively. I can give you an opinion but I just cannot answer it positively.

Trial Examiner Norwood: Did you determine it?

The Witness: No, I did not.

By Mr. MacIntyre:

Q. Mr. Boettcher determines those things, didn't he?

A. Well, he might have, but I would not say that he did it. Mr. Morse was quite a factor when he was alive.

Q. Who in your organization determines such things?

A. Well, as I say—

Mr. Werle: Wait a minute I object. Such things as what?

42127 Mr. MacIntyre: As we have just been discussing, membership in The Cement Institute, the Portland Cement Association, and sales policies.

Trial Examiner Norwood: The objection is overruled. Answer the question.

A. As I said a moment ago, it could have been Mr. Morse when he was alive.

By Mr. MacIntyre:

Q. The secretary of the Ideal Cement Company?

A. Well, he was vice-president and general manager. He had a great deal to say about things. Mr. Boettcher had a great deal to say. I could not say which one of those men determined those things.

The Witness: I noticed in a re-reading of that 42128 question there that it refers to sales policies.

Trial Examiner Norwood: Yes.

The Witness: And I had already disclosed here that I handled the sales policies, and that there was practically

no direction, if any, whatever from Denver, so far as the details of sales policies were concerned.

By Mr. MacIntyre:

Q. In your answers to Mr. Werle's questions on direct examination to the effect that you had not entered into any agreement, or understanding or agreement with your competitors, concerning the sales policies and the policies of management, and so on, of Your company, you did not mean to imply by your answer in that respect that Mr. Boettcher and Mr. Warner, and other assistants of Mr. Boettcher in the Denver office, had not discussed such matters with competitors in the industry, did you?

A. I would not know anything about what they did.

Q. You were only speaking for yourself; is that correct?

A. Only speaking for my company and myself, yes. I would not know anything what they would do.

Trial Examiner Norwood: Well, what do you mean by speaking of your company and yourself,—it did not include these gentlemen he mentioned?

The Witness: Yes. I am speaking, as I said—I handle the sales policy of this company myself.

42129. Trial Examiner Norwood: Yes.

The Witness: And anything that they might have done regarding any of the other companies I would not know anything about.

By Mr. MacIntyre:

Q. Of course, you did not mean to imply by any of the statements that you have given in your testimony on direct examination that Mr. Martindale had no understanding or arrangement or agreement with competitors concerning different matters?

Mr. Werle: I object to concerning different matters. If it is something in particular in this case, I haven't any objection to the question.

By Mr. MacIntyre:

Q. Well, concerning competitive practices in the cement industry—I will make it more specific.

Trial Examiner Norwood: Go ahead.

A. No, I would not know anything about that.

By Mr. MacIntyre:

Q. You did not intend your testimony to cover the actions—

A. No.

Q. —And collaborations of Mr. Martindale; is that correct?

A. That is correct. I am talking about my own company entirely.

Q. Yet you, according to your testimony on direct examination, have from time to time received freight
42130 rate compilations from Mr. Martindale.

A. Yes.

Q. One of which is Respondents' Exhibit 3420-A to Z-44.

A. Yes, sir; that is right.

Q. And you are not prepared to state now just how much reference he had to Cement Institute freight rate books or other and from members of The Cement Institute in the preparation of those compilations; is that correct?

A. No, I could not swear to that; I do not know that.

Q. But you do, as you have testified on your direct examination, use these compilations that Mr. Martindale sends you in the conduct of your business?

A. Well, yes, we note corrections that he gets originally; that was probably important to us in establshing the sort of information in the office to work from; but it is surprising how little we use any of that character, unless there is a change in it. We have got our system. Our system is so well established in these cards and what we found in the territory that we hardly ever have to resort to anything of that character on the outside, unless it is change in rates, and, furthermore, we might not have to use that book once during the year, because, as I told you in other testimony, here, and other answers, we have a man who is very capable as a traffic man, and he gets the tariffs, the originals, and does his own checking for his own satisfaction to see whether or not these rates
42131 may be right in all instances.

Trial Examiner Norwood: Well, didn't the men in the field use that book?

The Witness: No, The men in the field do not use it. They just use the prices on that list that we put into the record here a while ago, the alphabetical list of destinations with prices.

Mr. Werle: Referring to Respondents' Exhibit 3424, Mr. Hoenig?

The Witness: Yes.

By Mr. MacIntyre:

Q. Now, referring again to Respondents' Exhibit 3420, and especially to the page of it marked Z-17.

A. Is that that exhibit?

Q. It is the freight rate compilation.

Will you please explain how you could use any information appearing on that sheet, and the column headed "RAP" which you said was Rapid City.

A. How we could use it?

Q. Yes, and how you have used it.

A. Well, now, use it in what way, Mr. MacIntyre?

Q. Well, in any and all ways that you use it.

A. Well, first of all, this is a rate per hundredweight. If we wanted to check this as to rate per barrel, we would have to convert it into the rate per barrel by multi-
42132 plying it by 380, 3.8, which would give us the rate per barrel.

Q. And disposing of fractions?

A. If we had a fraction in there that was more than half a cent, we would add it to the next cent, and if it were under a half cent, we would lower it.

Q. And how would the result you would thus get, what would you do with that result? How would you use it?

A. Well, we would not use it, generally speaking, because we would not have to use it. Generally speaking, we are not interested in rates or anything else. We are interested in prices that we find at destinations.

Q. Well, why do you have that information in the book if you never use it, Mr. Hoenig?

A. Oh, we might have reason at times to check, find out whether or not a rate that was being charged against us by the railroad company was correct, for invoicing purposes, or something of that character.

Q. Would you invoice cement on the basis of a freight rate from Rapid City, S. D.?

A. Well, I see what you mean. Well, now, let's see. From Rapid City. There might be times when we would find in the field a quotation that would reflect a price being made out of Rapid City, and we would take a rate like that, convert into barrels, and check it back to see what kind of a price they were possibly making.

42133 Q. That is, what kind of a base price it would offer?

A. Well, whatever you want to call it. We would call

it an item of delivered price that they make at their mill. However you want to characterize it.

Q. But you could not use such information in connection with any traffic or shipping matters, could you?

A. Well, we could not use it in connection with shipments from Superior, no.

Q. Or any other traffic matters concerning your shipments from Superior, your mill?

A. No, I don't think we could.

Q. And yet you do not know how Mr. Martindale, who made up these compilations, arrived at the figure of such freight information as appears there do you?

42134 A. No, I could not speak for Mr. Martindale and his methods.

Trial Examiner Norwood: Do you know anyone who might have made that, figured them out?

The Witness: Well, if he made them out according to the way that we would expect him to make them out—I cannot say; no, I cannot say how he would do that.

Mr. Brick: Our concession, if Your Honor please, might help in that connection. We conceded time and time again that the respective Respondents are interested in the routings only from their own mills. Mr. MacIntyre insists when repeating his interrogation of witnesses with regard to what, if any, use they could make of freight rate books for the purpose of routing information and other information from other mills, I think it is about time we recognize that these companies only ship from their own mills, and we so conceded, and have time and time again.

Trial Examiner Norwood: I think the point here is what this witness knows about this book, not that

42135 other situation at all.

Go ahead.

By Mr. MacIntyre:

Q. Mr. Hoenig, showing you a page of that Respondents' Exhibit 3420-Z-16, I think you told Mr. Werle already that the names and those locations which appear in abbreviated form at the top of those various columns—you have told him what they are, "MC," for Mason City, and the like.

A. Yes.

Q. Now, I will ask you this question: They are almost

all recognized basing points for pricing purposes; is that correct?

A. No, I would not say that.

Q. Well, will you please name—

A. All I will say about this is that those mills are and have been, especially within reasonable distance from our mill at Superior, and located in such a way that we find them at times, and some of them all of the time, competing with us and making prices in our territory. As to their being basing mills, or non-basing mills, I could not characterize them as one way or the other. They might be a basing mill, and we would not know until we had found prices being issued by them and checked them back. It might be a non-basing mill today and a basing mill tomorrow, as far as that is concerned.

Q. You recognize, though, within the past 10
42136 years practically each one of them is a basing point?

A. Not as a basing point, no; as a possible—as a point that might possibly establish a price at their plant which would affect our competition and force us to meet it.

Q. Well, you have within the past 10 years, however, recognized most of those points as basing points, isn't that a fact?

A. Well, we have recognized them as points that made prices, that established prices that we had to meet in the territory, what you call basing points. You understand I do not agree quite with your characterization of a basing point, but I will go so far as to state that some of those mills have made prices, destination prices, one way or another, that have affected prices in our territory, and for that reason, as long as these mills are located geographically at the same points, and remain there over a period of years, we expect them at some time or other for the next 10 years to probably affect us with those prices, so we want to be ready with our references, and we get our records in such shape we can check back immediately and find out what they are doing.

Q. In my use of basing point and basing-point prices, you understood my use of them to mean the same thing as your use of the same terms in your letter to Professor Burns, Commission's Exhibit 971-17-T and 17-U, didn't you?

A. Well, as I say, I might have been a little loose
42137 that time in characterizing basing points, but when it gets right down to what I mean and understand to be the situation, I would say that my answer here answers it; when I read this letter I was rather free in my vocabulary and in my terms, and did not get right down to what I really meant at times, as I explained in other answers here today.

Q. Do you think you were more free in your use of language about basing points then than you have been in the last few months, Mr. Hoenig?

A. Well, I should say when I am on the stand here, being questioned as I am, I am expected to do a little thinking, and have my answers rather precise and to the point, and that is what I am attempting to do, to give you exactly what I think and believe and know.

Q. You know Mr. Phil Runyan?

A. Yes, I know him.

Q. As secretary of the Nebraska Lumber Dealers Association, don't you?

A. Yes.

Q. He has discussed with you the matter of your dealer policy, hasn't he?

Q. While Mr. Runyan has been in to see me about advertising in his magazine, and about things in general, I do not believe that he has ever discussed the matter of dealer policy with me.

Q. Is that your testimony, Mr. Hoenig, that Mr.
42138 Runyan has not communicated with you orally and in writing that he desired you to arrange your policy so that you would be selling more cement through dealers than you had theretofore?

A. Now, I can truthfully say that Mr. Runyan never raised that question with me; never did.

Q. Is it also true—

A. I will say, as I said a while ago in answer to that letter, that communication, that I cannot deny that I received a communication, I cannot deny that the dealers in the territory possibly who Mr. Runyan represented in his association, did not individually contact me and complain to me and occasionally discussed things with me about policy.

Q. That is, it is your testimony now that you are not denying that you received from Mr. Runyan this Commission's Exhibit 461 Mr. Werle showed you?

A. No, I am not denying it, but I do not recall it, either. I do not recall it. I do swear Mr. Runyan never discussed policy with me.

Q. What is your testimony on that point with respect to Mr. A. T. Hansen, of the Atlas Lumber Company?

A. Yes, Mr. Hansen would be one of the individual lumbermen that I referred to in the last answer, one of the dealers who is quite bright, exceptionally so, and who was deeply interested in policies, who undoubtedly talked to me about it and asked me where I stood on it, what I
42139 was going to do, and so forth.

Q. You do recall Mr. Hansen discussing the matter with you?

A. I would not be surprised.

Q. During 1935?

A. Because he is the type of man who might have done that. I do not recall that he did. I won't say that he did, but I cannot deny that he did not, either.

Q. You knew Mr. Hansen as chairman of the Trade Relations Committee of that Association, didn't you?

A. I do not know his capacity; I did not know that he was on any special committee, but he is the type of man who is very active in affairs of that kind among the lumber men, and I would be afaird to deny that he did not discuss the matter with me at some time, but, as I say, I do not know that he did.

Q. Showing you Commission's Exhibit 947-16-L, 16-M, N, O, P, I will ask you if you recognize that as a memorandum that you received from your Denver offices under the date shown thereon?

Mr. Werle: Is that in evidence, Mr. MacIntyre?

Mr. MacIntyre: That is from the office of Mr. Boettcher.

A. No. That is something that came through as a matter of routine, that I do not recall ever having seen, but it is not anything that I would not have learned possibly in some other way. I do not remember getting it, and
42140 do not believe it was ever placed on my desk.

Q. Well, you frequently receive documents of that character addressed as memoranda to sales managers from Mr. Boettcher's office, don't you?

A. Well, you might be surprised to know that this is the first one that I recall ever having received of that character or of any other character. As I told you be-

fore, we have very little intercourse with the Denver office at all, so far as policy is concerned, so far as sales are concerned we seem to run our business, surprising as it may be, just like an independent company, and if that came through, as it indicates there that it did, it was considered by us merely as a matter of routine and nobody paid any attention to it any more than I did to the copy of the Code that was shown here, or proposed Code, or whatever it was, a while ago. There was so much of that stuff coming through the mails that we considered much of it like advertising.

Q. Well, I now show you Commission's Exhibits 2237 2238, 2238, and ask you to state why it is that you so communicated, as is shown by those exhibits about which you told Mr. Werle on direct examination, that is how you so communicated with Mr. Warner and Mr. Boettcher, about the sales practices described therein if they have nothing to do with your sales policies?

A. In this particular case I think you are talk-
42141 ing beside the point there because this does not refer to any policy of our company particularly. This refers to a policy of the Three Forks Portland Cement Company. It refers to a job up in their territory, and the fact that this was written on request.

Q. Request of whom?

A. Request of the gentleman who telephoned me and asked me about that price situation. It says in the paragraph here, Mr. Rockwell, of the Ash Grove Company.

Q. Who requested you to write that to Mr. Warner?

A. But he did not request me to write it. He called me about the prices, and this letter was the first of that and the other material in here was merely incidental.

Q. Why did you send a copy of that to Mr. Warner, as is shown here?

A. Well, I sent that to Mr. Warner for his information, because he also does business in Wyoming.

Q. That is, you work along with him in matters of the sales policy in your territory which you have in interest?

A. No. We would cooperate with him as well as we would with Mr. Short, for example. When I first looked at this I did not know who I wrote it to. I had to check it over to see whether I wrote to Mr. Short or the other, because that job was in a territory which could have been handled by either of those mills, either Three Forks or the Colorado Portland.

42142 You see, that is a Wyoming job, but it is at the outskirts, you might say, of either of those territories.

Q. Now, calling your attention to Commission's Exhibit 2252, that letter from Mr. Warner to you, what is your explanation of Mr. Warner's interest in those situations in your territory and your sales in that manner?

A. That was a case that was quite similar to the one we were just discussing. This, that Mr. Warner is writing about, refers to work here in North Platte. North Platte is just about at the dividing line of the territory that we serve and the territory that he serves, and we had a common interest in the dealers in that town, in that city.

Q. So when you had such common interest you and he worked together for the interests of the Ideal Cement Company; is that correct?

42143 A. Well, yes, ultimately that is so. Of course, I am interested in my company and he is interested in his.

Q. But Mr. Boettcher compels you to both be interested in the Ideal Cement Company since he owns both your company and Mr. Warner's company; is that correct?

A. Well, I should imagine it would be natural for the president of a company to be interested in the Ideal Cement Company as distinguished from the Nebraska or the Colorado Portland, if there were an important situation involved, which meant profits or loss.

Q. You know that to be a fact, you just don't stop at your imagination on that; isn't that correct?

A. Well, I will say it is correct, yes. Anyone would know that.

Q. Now, referring to Commission's Exhibit 2239, what is your interest in writing Mr. Warner and giving him that information unless it was to report to him and thereby to Mr. Boettcher's office just what was happening up in your territory?

A. As you will recall, when we testified here a while ago regarding these rates that come from the traffic department, from Denver, the sales managers of the different companies keep them posted down there regarding the prices and information that they are able to gather in the various territories, and especially in our own territory, as far as we are concerned, and this was undoubtedly what we had checked to be the situation in the territory 42144 in which we operate.

Q. And why do you so report?

A. Well, we reported it largely for the purpose of their furnishing and completing that record there, that is all. They send it back to us undoubtedly in that form eventually.

Q. What did the Leigh plan have to do with that?

A. Oh, I do not know. I think that was merely incidental, that part of it. I was merely calling his attention to what I found in the Nebraska territory with reference to the Lehigh plan for whatever it might be, what use it migkht be to him, either as a matter of information merely or for actual use.

Q. To him and to Mr. Boettcher?

A. Well, really this was to Mr. Warner. I did not have in mind Mr. Boettcher seeing it. It was a matter of interoffice information that might be of value, or at least of interest by one sales manager to another. I am always glad to get information of that kind for whatever it may be worth to me, and I am sure that he does.

Q. Now, when this base was placed on your Superior, Nebr., mill in 1931.

A. Yes.

Q. Mr. Boettcher handled that matter largely with your competitors for the Nebraska Cement Company, didn't he?

A. I do not know that he handled it for our company. He may have taken a position or done something, 42145 but so far as handling it is concerned. I think we had the big job of handling in our particular territory; the burden was on our sales organization.

Q. That is, you handled it so far as the effect of it was concerned?

A. Well, you might place it that way. We handled it so far as the competitive situation was concerned. We had the responsibility of attempting to keep in existence during the time that it was on there.

Q. Wouldn't you say that Commission's Exhibit 2241 and 2242 and 2244, the exchange of correspondence between Mr. Boettcher and one of his competitors related to the or shows the effect of his handling—the question of attempting to get the base removed from the mill after it was placed on there?

Mr. Werle: Just a minute. I object to the question. The exhibits speak for themselves unless Mr. MacIntyre

first establishes Mr. Hoenig had some knowledge about this correspondence.

Mr. MacIntyre: Well, I protest suggestions to the witness through such a statement as that, that he may not have any knowledge of the correspondence. Let us find out from the witness first.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: The objection is overruled. Answer the question.

42146 A. It would be mere opinion on my part as this correspondence is entirely foreign to me.

By Mr. MacIntyre:

Q. Do you mean to testify, Mr. Hoenig, that you did not discuss the question with Boettcher of his efforts with his competitors to get that base taken from your mill?

A. No, I do not think I ever discussed it with him.

Q. Or with anyone else?

A. No.

Q. It is your testimony that you never discussed that or wrote to anyone concerning that?

A. I do not believe I ever.—I may have written a report to Mr. Boettcher. Mr. Boettcher comes to see me in Omaha probably a couple times a year. I have not seen him, I have not seen him in about eight months. It is possible at the psychological time he might have been in Omaha and I discussed it with him. I surely kept him advised of a situation as serious as that.

Q. That is, of the effect of it?

A. Well, of the fact that it was there; that would be only nature, because we were in an emergency at that time, but I do not know a thing about that correspondence. I never knew that he had written that correspondence or that letter.

Q. You testified on direct examination that the Nebraska Cement Company had membership in The Cement Institute.

42147 A. Yes.

Q. Back in the time that The Cement Institute took over the Kansas City division or the Kansas City Cement Bureau as the Kansas City Division of The Cement Institute; do you recollect?

A. I think I testified about that.

Q. Isn't it a fact, Mr. Hoenig, that Mr. Boettcher and Mr. Warner represented your company at meetings of The Cement Institute in that division?

A. I do not recall Mr. Boettcher or Mr. Warner coming to Kansas City to a meeting of The Cement Institute at any time. That does not mean that Mr. Boettcher has not been in Kansas City because he goes through there various times on his way to Oklahoma, but so far as being there at any meeting of that character I cannot recall anything of that character with Mr. Boettcher, and particularly with Mr. Warner, because he very rarely goes out of his territory unless he is going East for some reason.

Q. Is it your territory, Mr. Hoenig, that Mr. Warner did not attend the Kansas City Cement Bureau and the Kansas City Division of The Cement Institute as a representative of the Nebraska Cement Company, the Three Forks Cement Company, the Union Cement Company, and the United States Portland Cement and the Colorado Portland Cement Company at times?

A. If he did, it is not to my knowledge. I do not know anything about it. He may have done it without my
42148 knowing it. I do not know a thing about it. It is a surprise to me if he did it.

Q. You do not mean to testify here that Mr. Boettcher did not instruct him to do that, and that he did it?

Mr. Werle: Oh, I object to that. If is wholly incompetent.

Trial Examiner Norwood: Do you know anything about the circumstances?

The objection is overruled.

The Witness: About this question of Mr. Warner?

Trial Examiner Norwood: The last one.

Read it.

The Wtness: No, I do not know a thing about it. It is a surprise to me if he did. I do not think it would be on more than one specific occasion if he did. He certainly made no practice of it.

By Mr. MacIntyre:

Q. You do not want your testimony here on direct to be taken to the effect that Mr. Warner did not at Mr. Boettcher's direction attend Cement Institute meetings in Kansas City and act at times,—represented the Nebraska Cement Company, do you?

A. I would want to go on record as saying that I do

not recall ever seeing Mr. Warner at a meeting of that character in Kansas City while I was there.

42149 Q. Well, I am talking about at meetings where you did not attend.

A. So far as what might have happened over my head, or in my absence, of course I would not testify to that; I do not know.

Q. In order words, you are not testifying here, and you do not want anything you have testified to be taken to the effect that Mr. Boetteher has not instructed Mr. Warner to represent the Nebraska Cement Company at meetings of The Cement Institute in Kansas City?

A. No, I would not want to go that far with it.

By Mr. MacIntyre:

Q. Or to the effect that Mr. Warner has not so attended the meetings at such directions?

Mr. Werle: Same objection.

42150 A. No because I myself attended not very many of those meetings. He might have been there some time when I was not there and I did not know anything about it.

By Mr. MacIntyre:

Q. That is, at Mr. Boettcher's instructions.

A. And do not know anything about it, but I would be surprised if such instructions were given or Mr. Warner had attended such a meeting; it would be quite a surprise to me.

Q. Is it your testimony, Mr. Haenig, that you do not know that Mr. Warner attended meetings of the Mid West Statistical Bureau, the Hiram Noreross Cement Information Bureau in Kansas City, and the Kansas City Division of The Cement Institute as a representative of the Nebraska Cement Company?

42151 A. It is my intention to testify that way, that I do not know.

By Mr. MacIntyre:

Q. Is it also your intention to testify here that you do not know that Clark Moore, who preceded Mr. H. O. Warner as sales manager of the Colorado and the Ideal Cement Company, did not so attend as a representative, that is, those organizations, as a representative of the Nebraska Cement Company?

A. Well, in the first place you are giving Mr. Clark Moore a false title there in position as compared with Mr. Warner. Mr. Warner is a sales manager of an individual company, the Colorado Portland Cement Company, just the same as I am sales manager of the Nebraska Cement Company. Clark Moore was the general sales manager when he was alive of all of the companies of the Ideal Cement Company. Now, he was a superior officer of mine at that time with reference to sales.

Mr. Werle: May we have the time fixed, please, Mr. MacIntyre.

Trial Examiner Norwood. Now, tell us what you know about either of these two attending those meetings.

The Witness: I do not know a thing about them. I could not say a thing about it. I do not know whether
42152 Mr. Clark Moore ever attended meetings of that character or not.

By Mr. MacIntyre:

Q. Down to what time did he continue as a director superior of yours?

A. Oh, it is a good many years ago. I would say that he has been dead 12 years or more.

Q. You do know as a fact that Mr. Clark Moore, while he was a superior of yours, did attending the Hiram Norcross Cement Information Bureau in Kansas City, representing the Nebraska Cement Company?

A. No.

Mr. Werle: I object to that.

A. My answer is just the opposite. You are trying to make me answer it in a way I do not want to answer. I say I do not know that he did. I have no idea whether he did or not. He might have and I would not know a thing about it, because he did not tell me those things, and he never reported to me about those situations.

Q. That is, he did not inform you of what took place at those meetings?

A. No. In fact, I do not know anything about it.

Q. But he gave you instructions regularly concerning what your sales policies were to be at the Nebraska Cement Company; is that correct?

A. No, he did not even in his time have much
42153 to do with what our sales policies would be. They left it largely to me to handle those sales policies as

I saw fit, and as I was confident conditions warrented, demanded.

Q. Well, just what was the functions of Clark Moore as general sales manager over you at that time in so far as it affected Nebraska Cement Company?

A. Well, his function as general sales manager was to promote sales largely and inspire the different sales groups, and look after detail in general regarding the different companies. I won't say that at times he did not discuss matters of policy with me, but we did not have to discuss matters of policy so very much. He knows and I know that we find certain situation in the territory that we have to meet; we go ahead and meet them. He knows that I am doing to do that, and unless it is something very unusual he does not even mention it to me.

Q. But he frequently instructed you whether or not you were to meet a certain condition or not; is that correct?

A. He might not have instructed me. He might have had asked and given my reasons, if they were satisfactory, it was all right with him.

Q. Is it your testimony Mr. Clark Moore never gave you any instructions on policy at the time he was your superior?

A. Well, I do not know that he definitely did. I graduated into this thing from over a period of years and absorbed a lot of that piecemeal, day to day. It was 42154 not necessary for them to sit down and give me an outline of a definite sales program. That is something which is a sales manager ought—

Trial Examiner Norwood: Now, if you will make just a direct answer, there is no use in going into further detail.

The Witness: All right.

Mr. MacIntyre: Please read the question back to the witness. I do not think he has answered it.

(Question read.)

A. I think I answered that.

By Mr. MacIntyre:

Q. I do not believe it was a direct answer to that question.

The Witness: Why, I would have to qualify the answer, Your Honor, similar to what I did there. To some extent he did, and to some extent he did not. He left it largely to me.

Trial Examiner Norwood: Yes.
Go ahead.

By Mr. MacIntyre:

Q. Well, at the time that he was your superior and your company held memberships in associations with competitors, he attended meetings representing your
42155 company and you did not attend such meetings; is that correct?

A. I cannot answer that.

By Mr. MacIntyre:

Q. What?

A. I cannot answer that; I do not know.

Q. Well, at that time your company was a member of the Kansas City Cement Information Bureau, which was headed by Mr. Hiram Norcross, and you did not attend the meetings; is that correct?

A. Practically so. I said I attended very few meetings, very few of them, but as to what he did I would not know unless he reported to me, and he never reported to me. That was his business.

Q. Well, when did you start to attending these meetings regularly, of these organizations about which you told Mr. Werle you had membership?

A. I never attended any of them regularly. That is the thing that I am trying to bring out, that it was very infrequently that I attended.

Q. You know Mr. Hiram Norcross quite well?

42156 A. I knew him, yes. I did not know him very well, but I knew him, and during the time that he was there I do not think that I atended more than maybe two or three meetings in a whole year, and after the Code, when we had the Institute, and during the Code, I was about in the same frame of mind, I did not get to those meetings very often unless I had something special that I wanted to take up in the nature of a contract, that I wanted checked, or possibly a matter of credit with some concern that I was having trouble with, or something of that character.

Q. What benefit did you get from your collaboration with Mr. Hiram Norcross at this Cement Institute Division in Kansas City or the Kansas City Cement Information Bureau?

Mr. Werle: I object to the question until Mr. MacIntyre establishes that there was some collaboration.

Trial Examiner Norwood: Did the witness say he collaborated with Mr. Norcross?

Mr. MacIntyre: He does testify he attended meetings of that Bureau when Mr. Norcross was head of that.

Trial Examiner Norwood: Well, does that mean collaboration?

The Witness: Well, I answered in that last answer everything that I can answer for the question that you are placing now, and that is that if we had any contracts to check, we checked them; if we had any matter
42157 of credit serious, where somebody was getting into us for five or ten or fifteen thousand dollars, we would check that, and that was practically the sum and substance of the whole thing. That is one of the reasons why I did not attend the meetings, was that I did not see, excepting where I had a particular reason of that character, that I have mentioned, why I should spend the money and time to go down there.

By Mr. MacIntyre:

Q. Well, you told Mr. Werle about attending meetings, though,—you did attend some meetings where triplications and duplications of contracts were discussed.

A. Exactly. That is what I am trying to tell you now.

Q. That Mr. Hirani Norcross—

A. Well, I would assume they would extend back into that period, but I am thinking of The Cement Institute period as a whole, before and after the Code.

Q. Now, I am asking you what benefits you got from those discussions, concerning duplications and triplications of specific job contracts.

A. For example, it was important to me, and worth a good deal to me, if I had a contract for 10,000 barrels of cement in part of my territory, and I found that somebody else had a contract for the same job for 10,000 barrels of cement, and possibly a third cement company had a contract for the same job, for 10,000 barrels of
42158 cement, it was worth a good deal to me to go down to that meeting and thresh it out and find out whether it was true, that they all had commitments of 10,000 barrels, whether it was a triplicate commitment on that important contract.

Q. Even though it resulted in your cancellation of your 10,000 barrels?

A. Why, certainly, because I would not ship it anyhow. I was interested for example, I have to make a quota report to my company, and in those days when business was considerable, if we had a number of contracts of such substantial quantities that were duplicated and triplicated, I might be sending in reports for the next 60 days for my operating to show 150,000 barrels of cement when I only had a hundred thousand, so that is what I wanted to find out, how much of these contracts were fiction, or did they mean what they said. If I had a hundred thousand barrels of cement, I wanted to know it.

Q. Well, an option on the part of one of these so-called contracting parties to buy 10,000 barrels if he never did take it how could that hurt you?

A. Well, as I say why, it might disrupt our operating department because of the fact that they had planned on that ten thousand barrels and a number of other tens that had been contracted in the same way, and our quota would be off. We would be over-operating; we would be producing cement for a contract that we did not have.

42159 That was the important thing, and the next thing was that if we finally got checked on the situation, and we found that the contractor had actually duplicated or triplicated for that quantity of cement, why, the first thing we wanted to do was to get back to the contractor as quickly as possible and try to get him to re-commit himself in such a way as we would know we had the 10,000 barrels.

Q. Now, on this question of commitments, is it your policy to determine from all dealers before you commit yourself exactly how many barrels you can compel them to take under any of your committments?

42160 A. Well, we cannot compel them to take it, but it is our policy to try to keep well informed as to how much cement we are going to have to ship, and it is our policy if we can possibly do so to commit anyone who has any prospective business so that that will eliminate at least in a good many cases the possibility of our competitors soliciting that business away from us, and forcing us to go out and re-sell it, possibly, or lose it.

Q. You are willing to take options from some dealers on 15 days without any commitments on their part to buy

the cement from you, and you do it regularly; is that correct?

A. I do not think I understood your question, if that is what you were attempting to ask me the first time. We do not commit a dealer—that is, we do not ask a commitment from a dealer for a shipment within 15 days, excepting for the cement that he actually can warehouse or use within the 15 days, but beyond the 15 days if he claims that he needs protection on certain work, he has to show us what that work is and give us an opportunity to check that project and job, and determine how much cement it requires so that we won't be overprotecting him.

Q. Yes, but you cover him on all that he may want to buy for his warehouse within 15 days without any commitment that he will take a barrel?

A. No. Well, of course, he could—if he wishes 42161 he could cancel it for some reason or other, but our experience has been that we can always depend on a dealer, if he commits himself for 15 days' shipments, to ship it. Very rarely they will cancel, unless, for example, it might be a small dealer who did not move his cement rapidly enough and did not have any chance to warehouse.

Q. But he did not commit himself to any particular amount that he is going to buy—that is, within 15 days?

A. Yes, he might, if he were a big dealer in Omaha, he might say he would want to use five carloads in the next 15 days. A dealer in the country, five carloads would do him for a year, so we possibly might take that into consideration to see whether his judgment was good, or his intention.

Q. But you do not go checking around with a dealer when he wants coverage for 15 days, to find out whether other cement companies will also offer him coverage for 15 days at the price, do you?

A. Well, you call it coverage. We simply take the orders from him for that shipment, and we assume, like anybody else, if we got a chance to make a sale that it is best for us to attempt to make it without jeopardizing ourselves, without being too rigid about our qualifications.

Q. You do not go around attempting to cancel out any of your commitments with him simply because you find your competitors have also committed themselves to him for 15 days, do you?

42162. A. Well, the 15-day period does not cause us the kind of difficulty you have in mind. It is where 15-day committments are rather small, the character of that tonnage does not amount to very much, it does not get us into difficulties in our quotations and otherwise. It is the commitments on ten or fifteen or twenty-five thousand barrels on the 15 days over the entire territory that would cause the difficulty.

Q. Price changes occurs if it runs or are likely to occur if it runs beyond 15 days, and it might run into difficulties?

A. Yes, price changes one way or the other.

Q. Now, speaking about these Government bids or invitations for bids, that Mr. Werle asked you about on direct; he asked you about the invitation that is referred to in Commission's Exhibit 1063,—that is that Rolling Fork, Miss., invitation,—asked you about the invitation that is evidenced by Commission's Exhibit 1339, the so-called Good Friday, bid; 1341, 1387, 1386, some of which indicated the cement was to be used in Oregon, some in Wyoming, some in other points; in connection with your statement of your reasons for not bidding on those invitations you stated that you did not solicit the business in those locations where that cement was to be used, it was too far away, and that one of them, Shoshone,—was that it?

A. Yes.

Q. The Shoshone project, which was in Commission's Exhibit, for identification, 1341,—well, since all those invitations called for f. o. b. mill bids,—that is, f. o. b.

42163 cars at your mill at Superior, Nebr.,—why did it appear to you that the locations where the cement was to be used were too far away for you to participate?

42164 A. Well, we figure it does not make any difference whether the Government or anybody else is attempting to buy cement from us, there is no use in our fooling ourselves by making a quotation which seems so ridiculous to us, for one made for Alabama, where the freight would absorb more than the price of the cement, and when another mill might make a satisfactory quotation for that point. We know that if we did make a price f. o. b. mill the Government would merely laugh at it, or would have occasion to laugh at it, when they saw the price they would have to pay at destination for that cement as compared with what they have to pay another mill that had a short freight rate to that point.

Q. And that answer of yours goes to each of those invitations Mr. Werle asked you about?

A. Well, to a degree, in each one of them. There are some companies who might have less extreme reason for not bidding. But when you talk about bidding in Alabama or Mississippi from Nebraska, we know that cannot be done f. o. b. mill or anywhere else and sell any cement.

Q. Have you ever figured what the dealer's price is on W.P.A. cement in Rolling Fork, Miss., and deduct from that the applicable land grant rates and other freight rates from your mill, what your mill net would be?

A. Well, we have a fair idea of about what the maximum high range of dealer prices, of destination prices, run in various parts of the United States, and while
42165 we do not know accurately we know within 50 cents a barrel, probably can guess at it within that range; we know that the freight rate from Superior to a point like that would be almost equal to the selling price of the cement at that point. It would appear ridiculous on our part to make a bid.

Q. The record shows what the selling price was in that instance by dealers, so I am asking you whether you have ever check as it.

A. We have never checked it because we did not think it would do any good. We did not want to waste the time on it.

Q. Well, now, as one of these invitations that called for f.o.b. mill bids on cement to be used in the States of Colorado, Wyoming, and Nebraska, out in that territory, what is your answer as to that, that the points where the cement was to be used is too far away from the mill?

42166 A. The answer is not so extreme as the last one, but practically the same, that our mill nets would not be regarded as satisfactory there on account of the freight rate from Superior.

By Mr. MacIntyre:

Q. Yet you were permitted in the invitation to name an f. o. b. mill bid, and name any price you desired; is that correct?

A. Yes.

42168 Q. What was your price f.o.b. mill in 1937, Mr. Hoenig?

A. We did not have a price f.o.b. mill in 1937.

Q. Why didn't you?

A. Because we meet the prices that we reach, or that we find in the territory, and the only way that we would have a price in Superior would be by finding what our competitors were quoting at that point.

Q. Well, you told Mr. Werle on direct examination about some invitations in May, 1937, quartermaster corps wanting an f.o.b. mill price at your mill. Why didn't you give that to them at that time?

A. In the first place, I was not impressed at all with the fact that the Government asked for an f.o.b. mill price. I gave the Government purchasing agent credit for using the same intelligence in buying cement that any other good busines man would, and consequently I quoted him a price at the point of use, Fort Riley destination. I did that so that he would know exactly what he was going to have to pay me for the cement at that point, and I attempted to determine what other prices were being quoted at that point, and met them so far as I knew or at least met the price that I thought would attract the Government at that point.

Q. You did not think that he was very intelligent in wanting to try to find out what it would cost him laid
42169 down there, if your company made an f.o.b. mill bid?

A. I just figured I knew probably as much about our situation as he did, and I might be able to help him by making the bid as I did.

Q. You did not want to help him, though, about an f.o.b. mill bid; is that correct?

A. Well, that is right, maybe, but it did not impress me, as I told you, that it meant anything to the Government to buy f.o.b. mill,—that is, our mill. I figured it was an alternative, and that it was up to us to quote him the price, whether it was mill or destination, that appealed to him, and I quoted him with the idea of selling him the cement, making him a price that would sell it, and it would be easier for him to interpret what the price at destination was going to be to him, so he would not have to take that f.o.b. mill price and figure the freights from the mill, or land-grant rates. If he wanted to check my price, all right.

Q. You then did not want to put him to the trouble of figuring that out?

A. I did not care about the trouble, but it is a good point in salesmanship to make it as easy for the other fellow to buy as you can.

Q. Even if he wanted something else?

A. If he wanted it some other way, but it is my business, as a good salesman, to make it easy for him to know
42170 what it is going to cost him.

Q. Don't you go on the theory as sales manager that the customer is always right in expressing his desires, whether it is f.o.b. mill or destination?

A. That is, if I interpret it in this way, but in this case I had told you I did not think it was a serious matter, that it was—well, a matter of routine with the Government in asking me for a mill price.

By Mr. MacIntyre:

Q. Now, on direct examination you told Mr. Werle that sales work similar to this of federal relief emergency projects—that is, sales such as those that resulted in use on federal relief projects had been sold through dealers for more than 20 years. Do you recall that testimony?

A. Yes, that is my idea.

Q. Do you mean to say that you had been selling cement through dealers for use by the United States Government on any of its projects, through dealers, for a period of 20 years?

A. Well, I made a separate statement this morning regarding direct sales to the Government; that is, on regular Government projects; but we did not interpret these as the same character of work. We interpreted this W.P.A. business as a type of work that had been done in the territory for years. The only thing, the types were
52171 the same as they always were, and the only thing that the Government did was to add more money for the construction of more of these projects and make it possible to increase the tonnage, but the type remained the same, and it was the character of work that had always gone through the dealers.

Q. Now, for a period of about 20 years you have sold the Government direct for rivers and harbors—that is, to the U. S. Engineers?

A. Yes.

Q. Now, if the Government decided it did not want to

buy that direct, but wanted to buy it through dealers, would you be just as firm in your insistence that it continue to be sold direct as you have for the last 20 years, as you were that this federal relief agency material be sold through dealers?

A. I do not think that is parallel—

A. Well, that is not a parallel situation. I do not believe—you see, if the Government had wanted to, it was not a question of dealers, in your case the Government was acquiescing or really suggesting a change in their method of purchase.

42172 By Mr. MacIntyre:

Q. They wanted to buy direct for W.P.A.?

A. Well, in this one case the Government was acquiescing in the change of policy of buying through dealers; in the other, the dealers were objecting to the Government buying direct. There would not be any argument there with the Government; if the Government wanted me to place all the Government business through the dealers I would be tickled to death to satisfy both parties. I know it would certainly please the dealers, if it pleased you to give them a commission on that basis.

By Mr. MacIntyre:

Q. But on W.P.A. business, where it was a matter of dissatisfying the Government and satisfying the dealer, you took the dealer; is that correct?

A. We continued to sell the dealer on the same basis we had always sold him, and in the case, which is not parallel with the first one you placed in here, the dealer did not acquiesce in any change, he did not suggest a change. We were selling direct to you and we were trying to satisfy all parties.

Mr. Werle: Now, may I have the last part of that answer read?

(Answer read.)

42173 A. To the Government.

Mr. Werle: I object to Mr. MacIntyre being set forth as the Government in this proceeding.

Trial Examiner Norwood: Proceed.

Mr. MacIntyre: Will you please have the reference there to the U. S. Government, rather than to me.

Trial Examiner Norwood: Go on.

The Witness: I think it is done.

By Mr. MacIntyre:

Q. On direct examination you told Mr. Wede that all your prices do not reflect a base, some basing-point price. Will you please tell us which ones do not and which ones have not, say, since 1933?

A. Well, on account of tonnage that we have had in Nebraska,—since 1933?

Q. That is, your open published prices, which ones have not?

A. There have been a large percentage,—there has been a large percentage of the tonnage shipped into that territory that was not based on any price, as you call it. How did you word that?

Q. I asked you if you could cite us any instance since 1933 where a price quotation, open published price quotation, did not reflect a basing-point price in your territory?

A. There was a good percentage of it that did not reflect any price of that character.

42174 Q. Well, when did those price quotations of your published prices that did not reflect a basing-point price?

A. Largely in highway business, and in dealer business of a substantial nature in the larger cities, like Omaha—since 1933 I doubt whether there have been more than 15 percent of the business that has been sold for highway work that was not sold at some secret prices.

Q. I am asking you now about—and you have not answered as to that question—what price quotations of your published price of your competitors in your territory since 1933 can you cite to as not reflecting a basing-point price?

A. Well, I could not cite a very many of them, that we published, as you say.

Q. Well, it is a fact that there have been very few, they have been rare?

A. I could not cite very many of them.

Q. Is that correct?

A. Well, I would say that the percentage is small of published prices. I did not understand your first question.

Q. And very rare. Can you cite us any one of your published price quotations, or of your competitors, since 1933 that did not reflect a base—that is, a basing-point price in the manner in which you have used that term on your examination?

A. There may have been some, but I just cannot recall at this moment.

42175 Q. Now, these shipments that Northwestern States Portland Cement Company made to the State of Iowa in 1929, on contracts that you had originally bid on and secured, about which you told Mr. Werle,—do you recall?

A. Yes.

Q. Northwestern States secured a much higher mill net in handling that business than you would have secured if you had shipped it; isn't that correct?

A. Well, any company over in that territory with a shorter freight rate would have secured—

Q. Well, Northwestern, or Northwestern States, did in fact do that, didn't they?

A. Now, I don't think they—well, yes, I say they did to some extent. There is a division there, a dividing line in the freight between the two companies.

Q. Now, earlier this afternoon we were talking about this basing-point price that was placed on your mill in 1931. When was that removed?

A. I do not remember just when it was removed. I think it was on there for a couple of years.

Q. Removed during July, 1932, at the time of a general price advance, wasn't it—that is, it became inoperative at that time?

A. I do not recall. I do not know. I know it was on there for a year and a half or two years. I remem-

42176 ber the period but I do not remember the date very well.

Q. Well, the facts that you set forth in your reply to the Clark and Burns questionnaire as to its becoming inoperative was in effect a removal of it on the date that you showed in your reply to that questionnaire; is that correct?

A. Well, that is probably what I meant by inoperative; in other words, that we were finding that quotations were being made at other points.

Q. So that it in effect did remove it by its becoming inoperative?

A. That was the effect of it.

Q. And on the dates shown in your reply to that questionnaire?

A. I assume those dates were correct.

Redirect Examination by Mr. Werle.

Q. Just one question, Mr. Hoenig: In connection with this contract checking and these meetings that Mr. MacIntyre was asking you about, was there any cancellation of contracts by anybody on the occasion of such meetings, or how was that handled?

A. No, the only satisfactory way was and practical way that we found to handle that was, to go back to the contractor. Nothing could be accomplished there 42177 excepting to get the information that each one of them had a contract and we found that each one of them got back to the contractor as quick as he could and attempted to re-commit him definitely.

Mr. Werle: That is all.

A. Whoever got there first and sold it was successful.

Recross Examination by Mr. MacIntyre.

Q. Well, on that point, Mr. Hoenig, do you mean to testify that at the meetings there was no expression at all on the point as to whether or not at least a part of the contracts should be considered for cancellation without binding yourself as to which one should be cancelled?

A. No, I don't think so. I think all that they required, that they discussed at those meetings, were the circumstances that led to getting the contract, and at times the evidence seemed to show that they really did not have a contract when they thought they had one. The salesman thought that he had committed the contractor when he had not, and somebody else was certain that he had them committed. Well, the result was that the only way they could be sure about it was to go back and get the final definite evidence from the contractor.

Q. Is it your testimony that the question of cancellation, or even the word "cancellation" was not taken up at the meeting?

Mr. Werle: Oh, I object to that.

42178 A. I do not think so. I do not believe it would have done a particle of good. Any discussion of that kind, so far as I am concerned, would not have influenced me in the least. I would want to be the first one to get back and sell that cement.

Q. I am not asking you for your opinion of what would influence you. I am asking you what took place at the meeting there in respect to the word "cancellation" in this connection.

A. I would say we never heard it.

Q. It was never mentioned?

A. I do not recall that it was ever mentioned. It was not practical. It was not necessary to mention it.

Q. You just avoided the word,—all of you,—at the meeting?

A. Well, I won't say that we avoided it; but it just did not seem to fit into the situation. It did not mean anything.

Trial Examiner Norwood: How would you decide,—in case you found out that the contract was being duplicated—how would you decide who canceled?

The Witness: We went back to the contractor and made a second effort to commit him,—re-commit him.

42180 Washington, D. C.,
Wednesday, June 26, 1940.

42181 CHESTER A. BROOKE was thereupon called as a witness for the Respondents, and, having been first duly sworn, testified as follows:

42182 It is hereby stipulated and agreed that the witness C. A. Brooke, vice-president and sales manager of Monarch Cement Company (hereinafter referred to as "Monarch" or as "the company") shall be deemed to have given direct testimony in this proceeding, subject to the same conditions agreed on with respect to the stipu-
42183 lated testimony of Charles Horner heretofore appearing in the record at transcript page 36801, as follows:

(1) The Monarch Cement Company is a Kansas corporation having its sales office and principal place of business

at Humboldt, Kansas. The company has branch sales offices at Tulsa and Oklahoma City, Okla.; Kansas City, Mo.; Wichita, Kansas, and Omaha, Nebr. The company operates one cement plant which is situated at Humboldt, Kansas. The Company has no warehouses or silos other than those situated at its plant.

(2) The Monarch Cement Company was incorporated in 1913 and subsequently purchased the existing cement plant at Humboldt, Kansas, which had been constructed by the Monarch Portland Cement Company. The Monarch Portland Cement Company was formed in 1907. It began producing and shipping cement in September, 1909, and so continued in business until 1912, when it was dissolved.

(3) The Company's plant is located in the region known as the "Gas Belt," and was so located because of the availability of suitable raw materials, because there was available there at that time, at a low cost, gas which was suitable for fuel in the manufacture of Portland cement and because of proximity to good markets and readily available transportation facilities.

(4) The plant of the Monarch Cement Company is equipped with eight kilns, seven of which are used
42184 for burning clinker and one for cooling clinker.

When witness first became associated with the Company, in 1918, it had the same kiln capacity as it does now but it had a smaller grinding capacity and very limited storage facilities.

(5) Since witness has been with the Monarch Cement Company, it has added komminutor tube mills and separators to both the raw and finished departments and storage and blending tanks for raw materials. By the use of blending tanks it has been able to carry a more constant mix with resultant better control, easier burning and development of cement of much higher strength. The Company has made improvements in its grinding equipment which enable it to grind the material to a much finer degree. The Company has taken every available means of improving the quality of its cements.

(6) The Company has completely revamped the power department and installed modern steam turbines, condensors, and compressors. It has rebuilt the boiler settings so as to utilize the waste heat from the kilns. It has built a new laboratory building, installed up-to-date testing equipment, including compressing machine, air conditioning

system, and turbidimeter. It has added electric shovels for excavating limestone and shale, gas electric engines in its quarry, large primary crushers, and hammer mills. The Company has continually replaced obsolete machinery and equipment with modern, efficient machinery.

42185 (7) The Company's plant is equipped to operate on coal and oil as well as on gas and has shifted from one type of fuel to another in order to secure the greatest measure of operating efficiency and economy. At the present time the Company finds it is more economical to use gas which it purchases from producing gas companies.

(8) About 1920 the Company dismantled its inadequate warehouse storage which had a capacity of 40,000 barrels of cement and began construction of silo type storage. Today the Company's storage facilities have a capacity of about 300,000 barrels. It has added a modern packing plant and bag cleaning and storage plant. These facilities were installed at a time when the demand for cement in the Company's sales territory was increasing.

(9) The finished cement capacity of the Company's plant is estimated by the management as 1,500,000 barrels annually, based upon experience. During the year 1929 the actual finished cement production of the Company was in excess of 1,300,000 barrels and the plant was operating at practical capacity. The difference between the estimated capacity figure and the actual operating figure is due to the fact that shipments were not evenly distributed throughout the year and storage capacity of the plant was insufficient to allow continuous operation. In 1928 the Company sold and shipped in excess of 1,299,000 barrels of finished

42186 Portland cement and in 1929 in excess of 1,277,000 barrels of finished Portland cement.

(10) In recent years the Company has operated three or four kilns continuously. Although it has found that it is more economical to operate with all kilns in use, such operation causes longer shut-down periods except in years of peak demand. Therefore, the Company attempts to operate fewer kilns for as great a portion of the year as possible because it has found that such a schedule of operation spreads employment and helps its employees who have no other source of employment in the town of Humboldt.

(11) In addition to standard Portland cement, the Company, has for several years, produced a high-early-strength cement. The Company found some demand from

certain of its customers for high early strength cement prior to the time that it began producing it. In order to fill that demand the Company purchased high early strength cement from companies that did manufacture that type of cement. The Company has made modified low heat cement for special jobs and has catered to the Kansas Highway Department to a considerable extent on its special requirements. The Company has never reclined to manufacture cement according to special specifications, that its customers desired. The manufacture of high early strength cement and other Portland cements of special specifications requires special storage space and decreases
42187 the amount of standard Portland cement which the Company could otherwise produce and store. It finds that cements of special specifications are also more costly to produce. The Company has never taken any measures to eliminate special specifications. Neither witness nor any official of his company has ever attempted to discourage the development of new or special types or specifications of cement.

(12) The standard Portland cement and the high early strength manufactured by the Company, exceed the requirements of the specifications published by the American Society for Testing Materials and the National Bureau of Standards and have always exceeded such requirements. In spite of the improvements in the quality of its cement, the Monarch Cement Company has not been able to secure any premium for its cement over that of its competitors.

(13) The Monarch Cement Company at all times endeavors to keep abreast of improvements in quality of the cement made by its competitors. The Company has a chemist and three or four assistants who continually make tests on competitive brands of cement on the market, so that it can meet statements by its customers or its salesmen that a competitive brand is better than the Monarch brand. It has found, through tests it makes of competitive brands, that competitors quickly meet competition in improved quality. It has also found that it has been at
a competitive disadvantage and that business has
42188 been gained by competitors temporarily due to quality differences.

(14) The Monarch Cement Company favors standardization of product because its experinece has been that the

greater the number of specifications manufactured, the higher is the cost of manufacture, because of interference with economy of operation of the mill both in regard to production and in regard to storage, and the greater is the eventual cost of the product to the public. It has found that standardization of product benefits the consumer in that it promotes more successful and more satisfactory use.

(15) The Monarch Cement Company ships its cement into the States of Kansas, Oklahoma, Nebraska, the northeastern part of Texas and the Texas Panhandle, the western half of Missouri, the northwestern corner of Arkansas, and parts of Louisiana, Iowa and New Mexico. It has made occasional shipments into Minnesota, South Dakota, and Illinois. Such shipments were usually made, as the opportunity arose, to accommodate friendly contractors whom the Company serves in the territory in which it regularly solicits business.

(16) In the area described, the Company regularly encounters the competition of thirty-two competitors and in any one market in that area it usually encounters at least ten competitors.

42189 (17) There are six cement mills of competing companies located in the so-called "Gas Belt" in close proximity to the plant of the Monarch Company at Humboldt, Kansas, the Chanute mill of the Ash Grove Company; the Independence mill of the Universal-Atlas Company; the Iola mill of the Lehigh Company; the Mildred and Fredonia mills of the Consolidated Company; and the Dewey mill of the Dewey Company. All of these mills are located in Kansas except the Dewey mill, which is in Oklahoma close to the Kansas line. In addition, the Bonner Springs plant of the Lone Star Company is adjacent to the Gas Belt, and competes with these mills.

(18) When the witness first became associated with the Company in 1918, it had three salesmen. Owing to continually increasing competition which the Company has found in all parts of the area in which it solicits business, its sales force has been gradually increased over the succeeding years, so that by 1937 the Company had increased its staff to eleven salesmen.

(19) Increases in its sales force during the period stated were made by the Company in an effort to keep

competitors from securing business from Monarch's customers and prospective customers, in order to enable the Company to cover its sales territory more frequently, and, in a constant effort to secure more business. None of the increases in the size of its sales force was accompanied by any increase in the extent of the sales territory of the Company. Its sales territory today is smaller than 42190 it was in 1918.

(20) It is the general policy of the Company to sell its cement at delivered prices. This has been the policy of the Company ever since the witness has been with it. The reasons for its policy of selling at delivered prices are two-fold. It has been the experience of the Company that competition exists at the place where the cement is to be used and it must make its prices competitive at that point in order to get any business. Its experience has been that the buyer wants to know what cement will cost him at the place where he desires to take delivery and wants quotations on cement delivered to the destination because he ordinarily has no facilities for calculating freight from various mills in order to compare the costs to him and thus assure himself that he is securing the best price obtainable.

(21) The Company's salesmen are instructed to, and do, keep in contact with its customers and prospective customers at all times, with a view to ascertaining what its competitors are quoting and to detecting any change in price or sales policy instituted by any of its competitors and to keeping the home office informed generally as to what its competitors are doing.

(22) In addition to information given to the Monarch salesmen by its customers, the Company receives information concerning competitors' prices and the price 42191 and policy changes direct from its customers. The Company has about 400 dealers to whom it is selling its brand regularly. Many of these dealers handle competitive brands. The Company also obtains information as to competitors' prices from tabulations of bids taken on public lettings.

(23) Monarch hears of price changes from its salesmen and dealers within a very short time after the dealers, in the area affected by the change, have received the announcements. The Company attempts to confirm the

change by checking with its salesmen and dealers, other than those from whom it first received reports of the change.

(24) It is the practice of the Company to analyze all price information which it receives from its salesmen and dealers. This consists in checking the price quotations reported to it in order to see whether these prices, after deduction of freight costs, reflect a constant figure at some mill. If it finds that such a figure is reflected at some particular mill, the Company regards that figure as a mill base used by the Company issuing the prices, and adds to it the freight to all points which it believes might be affected by the change. Whenever a combination of that figure plus freight is lower than the market price it has theretofore found prevailing at a particular destination, it sends out quotations to its customers at the lower figure. The Company has found occasions where its analysis 42192 of price information received did not result in the determination of a constant figure at any mill and it could not estimate the points affected by the change in prices and could only act as to points at which its dealers and salesmen reported competitors' quotations reflecting a change.

(25) The Company has never had any understanding or agreement with any other cement manufacturer that any particular mill should be used as a basing mill or that any particular mill base figure should be used. The Company makes up its own list of mill base figures by obtaining price quotations and checking back freight rates. It has never exchanged any basing mill figures with any competitor.

(26) It has been the experience of the Monarch Cement Company that, as between its commercial customers and the Federal Governmental departments, its commercial customers are more desirable to deal with. Federal governmental bodies have habitually taken the full cash discounts even though the cash discount period has elapsed. The Company has found frequently that appropriations for particular federal jobs are not sufficient to cover the cement and packages; the Government arbitrarily deducts for the packages and when the job is completed the Government returns available packages which often are less than 100 percent of packages delivered and for which the

Government has taken full discount. Dealing with Federal governmental agencies involves special specifi-
42193 cations which tie up storage space for special tested bins, waivers, certificates, bid bonds, performance bonds and conditions and stipulations requiring much time to read and handle, with which the Monarch Company does not have to contend in dealing with its commercial customers who represent the great bulk of its trade. During the ten years last past the Monarch Cement Company has sold an average of only 2 percent of its total sales to governmental bodies, including States as well as the Federal Government.

(27) Since witness has been with the Company it has always sold the bulk of its cement to dealers. During the ten years last past the Company has sold over 72 percent of its product to dealers. It considers that its dealers are indispensable to the distribution of its product because of the innumerable services which they perform in their local areas in the way of contacting local users of cement, providing warehousing and deliveries locally, and handling credit and collections which the Company cannot handle itself. Most of the cement used in the territory where Monarch solicits business is consumed in small quantities and requires the kind of service that only dealers can provide. The Company is unable to render services to consumers as economically as such services are supplied by dealers. In connection with the sale of cement in small quantities, it is highly important that the customer's credit
be adequate. There are no facilities available to the
42194 Monarch Company for checking the credit of small consumers and the carrying of the consumer accounts is one of the valuable services performed by its dealers. Because every Monarch dealer is a cement salesman and, to an increasing degree, the sale of cement is promoted by dealers, Monarch cement covers a far greater territory through dealer distribution than it otherwise could.

(28) The Company does not have, and never has had, so-called "exclusive agency" dealers. In a few towns, because of the small size of the community, Monarch has only one dealer because it feels that its brand will be promoted better by one loyal dealer who has sufficient business to warrant the expense and investment involved. The Com-

pany constantly solicits dealers to whom it has not been able regularly to sell cement, and it has on numerous occasions sold cement to such dealers. It has found that its competitors constantly solicit and frequently sell to dealers whom it considers "regular" customers of the Monarch Company.

(29) The Company has never had any demand for delivery of cement by water and has never had any agreement or understanding with any competitors with regard to water delivery or in regard to what method of delivery it would or would not use in distributing its product. The Monarch Company has never employed any water transportation in the shipment of its cement. The Monarch plant is situated 350 miles from the Mis-
42195 sissippi River and water transportation has never been available.

(30) The Company's products have never come into competition with foreign cement. The Company has never had any agreement or understanding regarding imported cement, nor has it ever had any interest in, or taken any steps in regard to, imported cement.

(31) Ever since the witness has been with the Company, it has prepaid freight charges on shipments of its cement to "prepay" stations, to State highway departments and United States Government and occasionally to commercial customers who requested that the Company prepay freight. On other shipments it was the customers of Monarch Company who paid the freight charges at destination for the account of the Company as part payment of purchase price. Recently, through reports picked up in the field, Monarch learned that some of its competitors were offering to prepay freight charges on shipments to commercial customers and the Company met this competition by adopting a policy of prepaying freight on all of its shipments except those going to dealers who prefer to pay freight charges for its account when cement is delivered to them. This service involves an additional investment of about $50,000 to the Company because of the cash balances required to take care of freight charges on prepaid ship-
ments all of which expense the Company has had to
42196 absorb. The Company has never had any discussions or contact with any of its competitors regarding the prepayment of freight charges on shipments.

(32) The Company sells cement in carload lots to building material dealers, to State and federal governmental agencies, to railroads and to contractors. It has been the practice of the Company to sell its cement at wholesale ever since the witness has been associated with Monarch, throughout which time this Company has increased the number and tonnage of its sales direct to consumers. The Company does not attempt to sell small lots which require service that its dealers are able and prepared to perform.

(33) It is Monarch's policy to limit its sales to dealers to those of good credit standing, who are regularly engaged in selling cement and other building materials and who have facilities adequate to serve the public in the territory where they are located. The Company has followed this general policy ever since the witness has been associated with it. In practice, this policy has been flexible, all factors and circumstances being taken into consideration in the particular case.

(34) The Company has subscribed to the freight rate service of The Cement Institute ever since this service was inaugurated. The Company has found that these books are a convenient, economical, and accurate compilation
42197 of the freight rate information which it has occasion to need, at a cost far less than it could, individually, collect and compile the same data. The cost of this service to the Company has amounted to between $150 and $200 a year. It has included rates to all the stations in Kansas, Oklahoma, Arkansas, Louisiana, Texas, New Mexico, South Dakota, and Illinois.

(35) When witness became associated with the Monarch Company it was using rate books published by the Iola Cement Mill's traffic association. The compilations of freight rates used by the Company prior to the issuance of the freight rate books by The Cement Institute were similar to the freight rate books which the Company has received from the Institute, except that the earlier books were loose-leaf in form and were not as complete in that they did not furnish rates for some of the States in which the Company did business. The Institute rate service has been more dependable, more extensive, more convenient in form, and better printed than any of the other rate services to which the Company has subscribed.

(36) The Institute rate books have been revised and

re issued several times since the Company has been receiving this service. These revisions have increased the number of freight rates shown, changed the rates in accordance with newly issued tariff supplements and omitted abandoned stations. The Monarch Company has always been free to request that rates be carried from additional
42198 headline points or additional stations, or that states from abandoned shipping points or stations be canceled, and it has exercised that right.

(37) The Monarch Company has never owned or operated any truck for the delivery of cement. The Company has, at times, delivered cement to customers' trucks at its mill to meet the competition of the service which some of its competitors were offering to the trade.

(38) Deliveries to customers' trucks at the Company's mill have always been negligible. The only requests were from a few local customers for nearby delivery. The record of sales made by the Monarch Cement Company for truck delivery, in relation to its total sales, is as follows:

Years	Barrels Total	Trucked	Percent Trucked
1925	961,956	5,427	.005
1926	869,172	2,860	.003
1927	858,147	3,921	.004
1928	1,299,529	3,204	.002
1929	1,277,968	3,510	.002
1930	1,081,949	4,087	.003
1931	913,161	13,691	.014
1932	344,016	10,330	.030

(39) The Company found that it was expensive and inconvenient to serve trucks. The Company's plant
42199 was not equipped for truck loading, its loading platforms having been designed for car loading. Truck loading was slower than car loading, and interferred with car loading and delivery schedules. The cost of delivery to customers' trucks at the Company's mill was greater than the cost of car loading. Trucks called at the mill for three or four sacks. The Company was not equipped for retail delivery.

(40) Regular dealers of the Company complained to the Company that it was in direct competition with them

in retail sales. Fly-by-night truckers peddled cement without regard to overhead, which the Company's dealers had to take into account.

(41) When the Company found that a competitor had announced that it was discontinuing delivery to customers' trucks at its mill; Monarch decided to, and did, discontinue sales to the few trucks that called at its mill. It did this to gain the good will of its dealers. The Company has never had any understanding or agreement with competitors in regard to trucking.

42200 We also object to paragraph (31), beginning with the word "recently,"—everything following that word deals with matters subsequent to the issuance of this complaint.

Examination by Mr. Seeley.

I am connected with the Monarch Cement Com-
42201 pany. I have been connected with Monarch since 1918. I have been sales manager, during all that time, and vice president about four years. I became
42202 associated with the United Kansas Portland Cement Company in their sales office in Kansas City in 1908, and I think I went with the Kansas Cement & Material Company as assistant sales manager in 1914. Those dates are approximate. The United Kansas Portland Cement Company was a cement manufacturing firm. They had mills at Gas City, Kansas and Lee Hunt, Kansas.
42203 There was no connection between that company and Monarch. The United Kansas Portland Cement Company went out of business. Between 1915 and the time that I joined Monarch, I was with the Kansas Cement & Material Company of Kansas City, Missouri. That was a sales company jobbing cement; originally organized to take over the sale of the cement for the United Kansas Portland Cement Company; later it jobbed some other brands. They sold part of the output of Monarch, the output of the Altoona Portland Cement Company. It had no connection with the Kansas City Portland Cement Company. The Kansas City Portland Cement Company, I believe, was the company which is now known as the
42204 Missouri Portland Cement Company. The Altoona Portland Cement Company is out of business. The Kansas Cement & Material Company was dissolved.

Q. When you were with the Kansas Cement & Material Company, under what arrangement did you buy and sell your cement?

A. We sold cement of these various companies on a delivered basis and on a commission basis.

Q. Who carried the customers' accounts?

A. The Kansas Cement & Material Company.

Q. Was the cement shipped direct to the consumer, or to you?

A. It was shipped to the customer and invoiced to us by the manufacturer, and we in turn invoiced it to the customer.

Q. First, I will ask you: When you were with the Kansas Cement & Material Company, did you come into personal contact with the customers?

A. I did.

Q. What kinds or types of customers were they?

A. Dealers, contractors, railroad purchasing agents.

Q. Did you sell to railroads?

A. I think we did. I am not sure.

Q. Well, since you have been with the Monarch Company, has there ever been any distributor or any other middle man between your company and the consumer except the dealers that you have referred to in your stipulated testimony?

42205 A. No, there has not.

Q. Those customers you were telling about, customers of the Kansas Cement & Material Company, I want to know whether you quoted them f. o. b. destination or f. o. b. mill?

A. F. o. b. destination.

Q. Did they request quotations f. o. b. mill?

A. I do not recall any requests for mill prices.

Q. Did the Monarch Cement Company receive any inquiry from the Federal Trade Commission, to your knowledge, in 1931 concerning the organization of the company?

A. I rather think they did. I do not remember the date.

Q. Did you comply with that request?

A. I think so.

Q. I show you Commission's Exhibit 3119-A to E, and ask you if that is the response of the Monarch Cement Company to the inquiry referred to?

A. This letter of May 18, 1931, signed by Mr. Wulf, seems to be such a response.

Q. Do you recognize those letters?

A. I recognize them as our stationary and Mr. Wulf's signature.

Q. Who are the other officers of the Monarch Cement Company, Mr. Brooke?

A. Do you mean now?

Q. Yes,—as of the date of the complaint in this
42206 proceeding, you might tell us.

A. Fred H. Rhodes, president; Walter H. Wulf, vice-president, and William—I have forgotten the middle initial—William Fair, secretary and treasurer.

Q. Did you have a Mr. H. F. G. Wulf connected with your company?

A. No. He died, I believe, in 1934.

Q. Is there a Mr. A. C. Krietzer connected with your company?

A. Mr. Krietzer is also deceased. He died about a year later than Mr. Wulf, I believe.

Q. Is the Monarch Cement Company affiliated with any other cement producing or selling company?

A. No.

Q. Mr. Brooke, do you recall whether or not the Monarch Cement Company filed any bid on requirements of the Iowa State Highway Commission on or about August 16, 1932?

A. I recall having bid to the Iowa State Highway; but I do not remember the years and the dates.

Q. Well, do you recall whether your company, the Monarch Cement Company, made any bid to the Iowa State Highway Commission in December of 1929?

A. We may have. I do not remember the dates.

Q. Well, I show you Commission's Exhibits No. 1849-A and B, Commission's Exhibit No. 1851-A to L, and
42207 ask you whether that helps you recall if you did bid on such requirements?

A. These tabulations indicate that we did bid.

42210 Q. Mr. Brooke, were you the sales manager of the Monarch Cement Company at the time that the company submitted a bid to the Iowa State Highway Commission in August, 1932?

A. I was.

Q. Did that bid come to your attention before it was submitted?

42211 A. It did.

Q. Can you explain why the Monarch Cement Company limited its bid on that letting?

A. We had no hope of getting a large order from the State of Iowa because our experience was that the Iowa mills usually got the large orders, and there were a few complementary—a few small complementary orders placed with mills in States adjacent.

Q. Did you or did you not believe that there was a likelihood that your company would be given an award?

A. We had that hope, yes.

Q. Now, with respect to the other letting which is covered by Commission's Exhibit 1851, a letting on which the Iowa Highway Commission took bids on December 5, 1929, did you have any indication that the mills outside the State of Iowa would be given complementary orders on that letting?

A. Our Nebraska sales representative had been led to believe that we might get a complementary order.

Q. Do you recall, Mr. Brooke, whether the Monarch Cement Company submitted any bid to the Illinois Highway Department in March of 1929?

A. We probably did. I do not remember the date.

Q. I show you Commission's Exhibit 1899-A and B.

A. This indicates that we did.

Trial Examiner Norwood: Well, do you know
42212 independently of that whether you did or did not?

The Witness: I know that we bid on Illinois work for several years. I haven't any doubt but what we did bid on this particular date.

By Mr. Seeley:

Q. Did the Monarch Cement Company, Mr. Brooke, have any indication that mills outside the State of Illinois would receive any complementary orders on that letting?

A. No. You said did we have any indication? We had no assurance, no.

Q. Well, that was not my question. My question was whether the Illinois Highway Commission had indicated that they expected to give mills outside the State any complementary orders?

A. No, we had no such assurance or indication.

By Mr. Seeley:

Q. Well, do you recall whether you bid on any further invitations of the State of Illinois, or did you cease to bid subsequent to the—

A. I know we ceased to bid. I am not sure that this was the last bid.

Q. And why?

42213 A. Well, on my last trip to Springfield to talk to them, Mr. Frank Sheets was director of purchases at that time, and he told me that he thought we were one State too far removed to be expected to participate. I was also told that there was a disposition to patronize mills that were burning Illinois coal, so after that we refrained from bidding.

Q. Did the Monarch Cement Company have any agreement or understanding with any of its competitors that it would refuse to bid on these Illinois highway requirements?

A. Oh, no. No, no.

Q. Now, Mr. Brooke, do you recall whether or not the Monarch Cement Company bid on any requirements of the Missouri Highway Commission in the years 1929 to 1932, the period covered in that time?

A. Yes, we bid there for several years.

Q. I show you Commission's Exhibits 2437, 2438, and 2439. Now, with reference to a letting of March 5, 1929, there, Mr. Brooke, which is purported to be covered by Commission's Exhibit 2437, did the Monarch Cement Company, in submitting its bid, indicate any preference?

Mr. Paulson: I object. The document the witness has in his hand shows that.

Mr. Seeley: Well, if so—

By Mr. Seeley:

Q. My question, Mr. Brooke, leads to my next

42214 question, which is why?

A. This indicates that we bid at every point.

Trial Examiner Norwood: I shall overrule the objection and let the Counsel bring that fully.

Does the bid indicate as he has suggested?

The Witness: That we bid at practically every point.

Trial Examiner Norwood: Yes.

By Mr. Seeley:

Q. Now, with reference to the highway lettings of the Missouri Highway Commission for December 19, 1929, and

January 20, 1931, of which Commission's Exhibits 2438 and 2439 purport to be a tabulation, can you say whether the Monarch Cement Company selected any particular points at which it would bid?

A. We bid—wait a minute. On the December 19th bid we selected points. That is true of the bid of January 20, 1931, also.

42215 Q. What considerations did the Monarch Cement Company take into account in submitting its bid?

A. We were encouraged to believe that we might be the recipient of a small order, but the Engineer 42216 of Materials suggested that we ought to bid on a sufficient amount, sufficient number of points so if there was a disposition to award a small order to each of the several out-of-State mills, that he would have a sufficient number of destinations from which to select. Of course, we took into consideration the nets that we would receive and did not bid close to St. Louis and Hannibal, but rather showed preference to the territory that is normally served, at least partially, by Kansas mills.

Trial Examiner Norwood: You selected the points that gave you the best nets?

The Witness: Not always, but generally. In fact, we were told that we could not expect to have all the fat without any of the lean, and we spread our bid accordingly.

By Mr. Seeley:

Q. You were told by whom, Mr. Brooke?

A. Mr. Regal, of the Engineer of Materials.

Q. Did you give any consideration to transportation service in placing those bids?

A. Yes. We selected—that had a bearing on our selection of territory that we could give—at which we could give a reasonably good service.

Q. Do your answers apply to the letting of January, 1931, Commission's Exhibit 2439, as well as the other letting?

A. Yes.

42216½ Q. Mr. Brooke, subsequent to submitting your bid, which you have described, in January, 1931, to the Missouri State Highway Department, do you recall whether you revised that bid?

A. I do not know that we revised this particular bid. I know that we did subsequently revise the bid to give the State the benefit of a reduction in the market.

Q. I show you Respondents' Exhibit 3425-A to [illegible], and ask if that serves to refresh your memory as to whether you did reduce your prices on your bid at that time or subsequent to submitting it?

A. It does, yes.

Q. And you passed along the reduction in your prices to the State of Missouri?

A. That is correct.

Q. On all prices bid?

A. I assume it covered all prices. I would have to check it.

42217 The witness identified Resp. Ex. 3426 as a photostatic copy of Monarch's office record of shipment, classified by states, from 1929 to 1939 inclusive. The office record was made in the regular course of business and it has been the practice or custom of Monarch to keep such a record regularly. He can vouch for its accuracy.

(RESP. EX. 3426, was offered and received in evidence.)

42218 Trial Examiner Norwood: I am ready to rule on the Commission's objections to certain paragraphs in this stipulation.

The objection as to paragraph (31) is sustained; that is, all the matter, including the following words, "Recently through reports picked up in the field Monarch learned that some of its competitors," and so forth, everything thereafter in that paragraph may be struck.

By Mr. Seeley:

42220 Q. Do you recall a so-called plan for sharing available business, Mr. Brooke?

A. I do.

Q. Do you recall attending any meeting in Chicago in March, 1934, at which that plan was discussed?

A. I recall attending a meeting. I am not sure about the date.

Q. What was the attitude of the Monarch Cement Company in attending that meeting?

A. Oh, we were curious to see the results. We would not think it would be brought about,—really did not think it was feasible.

Q. Well, why did you attend the meeting?

A. Oh, mostly curiosity, I would say.

Q. Did any plan for sharing the business go into effect in your territory, to your knowledge?

A. No, sir.

I would like to change that answer of "curiosity." Of course, if a plan was worked out we wanted to share in it.

Q. Has the Monarch Cement Company ever had
42221 any agreement to share business in any part of its territory at any time?

A. No, sir.

Q. Well, have you ever shared business?

A. No, sir.

Q. With any other company?

A. No, sir. We have shared it, but not voluntarily.

Q. Do you mean that you could not get all you wanted?

A. That is right.

Q. Did the Monarch Cement Company subscribe to the statistical service of W. S. Mallory prior to the N. R. A. Code period?

A. We did.

Q. What was the purpose of your company in subscribing to that service?

A. Well, we were solicited by Mr. Mallory and he persuaded us to subscribe.

Q. Well, what use, if any, did you make of the service?

A. We were interested in his estimate of consumption. I have forgotten just what the other figures were. Mr. Mallory was a personal friend of our former president, Mr. Wulf. That probably had more to do with the subscription than anything else.

Q. Well, were those statistics or reports used by the Monarch Cement Company in any way to restrict its production or allocate business?

42222 A. Oh, that in connection with any other information that we could secure, that would indicate possibilities for our company might have some weight in our decision on our production program for the year.

Q. Do you refer to your interest in the prospective demand in your territory?

A. The possibilities, yes.

Q. Well, apart from wanting to know what prospective demand was, that is, did your company want to know where that demand was in the territory?

A. Yes.

Q. Has the Monarch Cement Company ever made any

use of clinker statistics? I refer to Commission's Exhibit 3205-A to E.

A. No. I would say not.

Q. Your stipulated testimony, Mr. Brooke, refers to the capacity, your estimate of the capacity of your plant. In estimating that capacity yourself, do you pay any attention to the capacity of competitors' plants?

A. I do not quite get that question.

Q. Perhaps my question is not clear. What I want to know is, are you influenced by other companies in
42223 estimating your capacity?

A. No, sir.

Q. I am now showing you Commission's Exhibit 972-2-Y and 973-1-H, and ask you whether those sheets, or either of them, represent the part of the answer of your company to the Burns and Clark inquiry?

A. This one does not.

Mr. MacIntyre: May the record show which one the witness is referring to?

By Mr. Seeley:

Q. Commission's Exhibit 972-2-Y is not a part of the answer of the Monarch Cement Company and was not prepared by anyone in your company; is that your answer?

A. Yes.

This is the one that we prepared.

Mr. MacIntyre: Which one is he referring to now?

Mr. Seeley: Commission's Exhibit 973-1-H.

By Mr. Seeley:

Q. Do you know, Mr. Brooke, how the calcula-
42224 tions on this sheet, Commission's Exhibit 972-2-Y, were arrived at?

A. No, I do not.

Mr. Seeley: I now move, Your Honor, to strike from the record Commission's Exhibit 972-2-Y. In order that Your Honor may understand our position correctly—

Trial Examiner Norwood: I understand it.

Mr. Seeley: —I want to point out on record page 7607 our objections went to certain numbered exhibits on the ground that they were work sheets, but on that objection—we did not have the benefit of that objection with respect to this numbered Exhibit 972-2-Y, and I want the record

to be clear on that because of the great burden put upon counsel for the Respondents when this great mass of material was thrust at us at one time. It was humanly and physically impossible to separate these papers and to frame our objections with a view to the different numbers of the exhibit.

The comment of Mr. Wooden at that point, record page 5543, in which he used the phrase "Notes a transmittal" is not accurate in that the paper in question is not a part of the questionnaire and does not constitute any correspondence between the Professors and this company.

Trial Examiner Norwood: Well, isn't that a paper that was produced with the other Burns and Clark papers?

42225 Mr. Seeley: The paper was produced at the time in the belief that it was part of the correspondence between the company and the Professors. In fact, it was not a part of the correspondence. It was not authorized by this Respondent and represents the operations of the minds of some third persons, and calculations which have no part in the—

Trial Examiner Norwood: Isn't this a renewal of a motion? You have made that motion heretofore.

Mr. Seeley: It is somewhat different from the motion I have made heretofore, Your Honor.

Trial Examiner Norwood: Well, it is the same material, isn't it, on which you based a previous motion?

Mr. Seeley: It is a part of the mass of material which the Commission claims was all apiece. I am pointing out that our objections were diverse. We object to the correspondence. We object to the answer and we also object to certain so-called work sheets. I simply want the record to be clear. The declarations contained herein are not authorized by the Respondents and are not binding on them, is our position.

Trial Examiner Norwood: Well, that is the same that I passed on two or three days ago.

Mr. Seeley: No, that is a different paper. It is 42226 a different number.

Mr. Werle: It is a different company.

Trial Examiner Norwood: What do you say?

Mr. MacIntyre: It is the same class, not the same paper, but out of the same class of material, one of the Clark

and Burns papers, that was submitted by Mr. Leisure in response to subpoena duces tecum served on Professors Clark and Burns.

Trial Examiner Norwood: Well, the motion is denied.

By Mr. Seeley:

Q. Mr. Brooke, in answering this inquiry of Professors Clark and Burns, what did you understand the purpose to be?

A. Well, is was my understanding that it was to be a study of the methods of the industry by disinterested parties, with the view of determining whether or not we were doing things in a logical way; that is, marketing cement in the best and most logical way.

42230 Q. Does the Monarch Cement Company make a so-called Carney mason cement?

Mr. Paulson: I object.

Trial Examiner Norwood: I think that Counsel has covered this matter of these extra cements, and I think they are thoroughly and completely and absolutely irrelevant. I thought that Counsel wanted to ask a preliminary question about something there, and I overruled the other objection.

Mr. Seeley: No. I think Your Honor perhaps anticipates that I am dealing with the subject of special specifications.

I am trying to clear the record. I want to have the record rid of extrinsic matter that is not the subject matter of this proceeding. There are a number of exhibits here, a number of Commission's exhibits, 2724-1 to 42, and several of them deal with the so-called cements, and unless I am permitted to examine the witness concerning these cements I will move to have these exhibits stricken at this time.

Trial Examiner Norwood: What are those exhibits in for?

42231 Mr. Seeley: Perhaps Counsel will be good enough to answer it.

Trial Examiner Norwood: What were they received for? What were these exhibits received for?

Mr. Paulson: Oh, this is that old invoice question. I do not think Your Honor has any trouble about that. We got invoices, and some of them show standard cement

along with other cements. Obviously, they are all on the same sheet. You cannot segregate those things. The Commission made an effort to simplify it as much as possible, and I think we succeeded.

Trial Examiner Norwood: In other words, Counsel for Respondents will wish to restrict the consideration of those to standard cement; is that correct?

Mr. Seeley: Shown on such invoices.

Trial Examiner Norwood: Yes. Well, it may be considered so restricted.

Now, what are the particular numbers of the exhibit that you want limited?

Mr. Seeley: I will give those numbers for the record.

42232 I ask that His Honor's ruling be applied to Commission's Exhibits 2724-24, -25, -26, -28, -29, -30, -32, -35, and -38.

Trial Examiner Norwood: That the consideration be restricted to statements of prices, and so forth on standard cement.

42234 Q. Your stipulated testimony, Mr. Brooke, shows that you have made use of The Institute freight rate books. Has the Monarch Cement Company ever used any conversion tables prepared by The Cement Institute, or by any other outside agency?

A. No. I have one of my own that I have had since 1908.

Mr. Seeley: I ask to have marked for identification a sheet of paper.

42235 The witness identified Resp. Ex. 3427 as a conversion table that he had prepared in Kansas City, Mo., in 1908 when he was with the United Kansas Portland Cement Company. When he left the United Kansas, he took it with him to the Kansas City Cement & Material Company and when he left them he took it with him to Monarch. He has used it since in his business.

Q. Is the so-called conversion in terms of—well, I will ask you, how many pounds to the barrel?

A. 380.

Q. In this table?

A. Yes, sir.

Trial Examiner Norwood: What was that figure?

The Witness: 380.

By Mr. Seeley:

Q. Do you use that in connection with bulk cement?

A. In figuring bulk cement, of course, we take the
42236 weight of the package off and use the figure 376.

Q. At the time that this table was prepared by you, did you make any bulk sales or shipments?

A. No. Bulk shipments were unheard of.

Mr. Seeley: I offer in evidence Respondents' Exhibit 3428, for identification (handing document to Mr. Paulson).

Mr. Paulson: Let me see that other paper.

(The document was handed to Mr. Paulson.)

Examination on Voir Dire by Mr. Paulson.

Q. Mr. Brooke, where did you get this rate book, this folded document of which this exhibit is a photostat copy?

A. Well, as I said, in 1908, in collaboration with our advertising manager, Mr. Singleton, and the printer, we got this up for its convenience, and we wanted something that would be easy to find, and therefore we had the cover in red. If it gets mixed up in the papers, you can find it.

Q. You say you had it printed?

A. Yes, sir.

Q. You, yourself?

A. Well, I, in connection with our advertising manager. I asked him for it, and he had it printed.

Q. Oh, he had it printed.

A. Yes.

Q. Who was your advertising man at that time?
42237 A. His name was Singleton.

Q. Do you have an advertising department in your company?

A. We did. That is the United Kansas Portland Cement Company I am talking about.

Q. What company are you talking about?

A. The United Kansas Portland Cement Company.

Q. What were Singleton's initials?

A. I do not remember his initials. That has been a long time ago.

Q. What was his position with the—what was it, the United?

A. United Kansas Portland Cement Company.

Q. And what was his position?

A. Advertising man. He handled the sales advertising for the company.

Q. Are you sure that he had it printed?

A. Yes, I am sure of that. I told him what—

Q. Did he compose the data or did you?

A. No. I composed it. I told him what I wanted, and he, being more familiar with the mechanics of printing and how to have it done, he did it for me.

Q. Did you calculate each of the figures on here?

A. Well, I don't remember that, but I probably did.

Q. Do you recall having turned over to him any tabulations of that character?

A. Who, Singleton?

42238 A. No doubt as an advertising man he would not know—he could not have made it without it; we would have to do that.

By Mr. Paulson:

Q. Did Mr. Singleton do advertising for more than one cement company?

A. No.

Q. Well, which cement company?

42239 A. The United Kansas Portland Cement Company.

Q. Was Mr. Charles Hoagland, did he have any connection with the company at that time?

A. Charles Hoagland never was connected with the United Portland Cement Company.

Q. Have you ever seen any other copies of that book in circulation?

A. Well, we had several of them made at the time, and at the time of these were made George E. Nicholson was president of the United Kansas Portland Cement Company and also the Iola Portland Cement Company, but I do not know—we had—.

Trial Examiner Norwood: Let me see that, please.

(The book referred to was handed to the Trial Examiner.)

A. We had a lot of them made up.

By Mr. Paulson:

Q. Why did you have a lot of them made up?

42240 A. Oh, we had one for each employee in the office, and some for the salesmen.

By Mr. Paulson:

Q. How many did you have made up?
A. I don't remember that.
Q. One hundred?
A. I doubt it.
Q. Seventy-five?
A. I would not have any idea.

By Mr. Paulson:

Q. Had you seen those in use by representatives
42241 of other cement companies?
A. Not for 20 years or more, anyway.

By Mr. Paulson:

Q. Now, at that time—I mean when they were printed.
A. I do not know that I have, except in our own office; that is the United Kansas.
Q. How long is it since you have ceased to use those?
A. This?
Q. Yes.
A. I am still using them, and I hope I get this one back.
Q. Let me see, for sure: Do you say that you have never seen that book in the hands of any other—of an agent of any other cement company?

By Mr. Paulson:

Q. Do you know whether or not it was used by the Iola Cement Company?
42242 A. No, I do not know.

By Mr. Paulson:

Q. Do you know that one of those is already in evidence?
A. No.

Mr. Paulson: I want to have this marked—this is the original—marked as a Commission's exhibit.

(The document was marked for identification "Commission's Exhibit 3256.")

Mr. Paulson: And I offer the original in evidence. The photostat would not be acceptable in this case because of the physical character of the document by which it is—it can only be identified.

I object to the introduction of the photostat.

Trial Examiner Norwood: Well, now, the question is—now does Counsel for the Commission object to the recep-

tion of Respondents' Exhibit 3428, for identification, which is a photostat copy?

Mr. Paulson. I do. I think we have run into an instance where a photostat copy is not acceptable in lieu of the original, the one having physical characteristics which cannot be copied in the photostat.

42243 Mr. Seeley: I ask that Counsel be required to specify just what there is in the—what differences there are, if any, between the photostat and the original?

Trial Examiner Norwood: Well, I think that for the purpose of investigation I shall overrule the Commission Counsel's objection and receive the photostat, and I shall also receive the original as Commission's Exhibit 3256, so that the Commission can see, and everybody else, just what they are.

(RESP. EX. 3428 was offered and received in evidence.)

(COM. EX. 3256 was offered and received in evidence.)

Direct Examination by Mr. Seeley (Resumed).

Q. Mr. Brooke, has the Monarch Cement Company made shipments where loss or damage occurred in transit?

A. We have.

Q. And what has been the practice of your company in respect to claims for loss or damage in transit?

A. We assume that loss.

Q. How long has that been the practice of your company?

A. Well, I think it has always been the practice.

Q. You say you assume the loss. If the customer owes you money, do you credit his account for the loss or damage claimed?

A. Well, we ask the customer to send us a state-
42245 ment of the loss or damage, and secure notation on the freight bill, if possible, or any other evidence that will enable us to recover it from the carrier if in our opinion the carrier is at fault.

The witness identified Resp. Ex. 3429 A-F as a claim against the railroad for loss and damage on a shipment to one of Monarch's customers. Monarch credited the
42246 account of the customer and this is typical of the practice of Monarch in respect to claims for loss or damage in transit.

The witness identified Resp. Ex. 3430 A-J as a memoran-

dum of a telephone conversation with Monarch's salesmen and letters of its competitors in or about December 27, 1939, in regard to the prepayment of freight. These papers are the announcements referred to in his stipulated testimony.

42247 Trial Examiner Norwood: These are papers that are much prior to the date of the complaint?

Mr. Seeley: Yes, that is the every point (handing documents to the Trial Examiner).

Trial Examiner Norwood: Well, the ruling is the same. Go ahead.

In view of those rulings the Counsel says he will not offer this Respondents' Exhibit 3430-A to J. He may have the benefit of an exception as though he had offered them. All the dates are subsequent to the complaint.

42248 By Mr. Seeley:

Q. Mr. Brooke, does the Monarch Cement Company allow its customers any credit for freight on cloth sacks returned?

A. We do.

Q. How long has that been the practice of the Monarch Cement Company?

A. Oh, it has been a good many years.

Q. Well, when, if you know approximately?

A. Well, I would say back in the '20's, probably '23 or '24, up to '26, something like that.

Q. Well, how did your company come to adopt that practice?

A. My first recollection is in the western States, the Portland Cement Company of Independence, Kansas, made an announcement to the effect that henceforth they would assume the freight charges on all cloth sacks of their brand returned to them at Independence.

Trial Examiner Norwood: When was that?

The Witness: Back in the '20's, as I could remember it. I could not state the exact date.

By Mr. Seeley:

Q. Well, did your action in allowing your customers to take advantage of that service when you first adopted the policy or at any time, have anything to do with agreement with your competitors?

A. No, none whatever.

42249 Q. Have you ascertained what that practice means to your company in terms of expense?

A. Well, it depends on the distance and the rate, of course, but on the average it amounts to two or three cents per barrel.

Q. Do you absorb that?

A. Yes.

Q. Mr. Brooke, do you have a customer or dealer by the name of Baxter Lumber & Mercantile Company?

A. Yes, sir.

Q. Do your salesmen call on the Baxter Lumber & Mercantile Company?

A. Yes, sir.

Q. I show you Respondents' Exhibit, for identification, 3431 and ask you, if you can, to identify that letter.

A. I remember the circumstances and I recognize our salesman's notation, S. W. Baxter on this letter.

Q. Did the Monarch Cement Company make any increase in its prices in March, 1933?

A. No, sir.

42250 Q. Mr. Brooke, was this letter, Respondents' Exhibit, for identification, 3431, received by you in the regular course of your daily business?

A. It was.

Q. On or about the time of the receipt of this letter, do you recall whether the Monarch Cement Company received any information that the Dewey, Ash Grove, or Lehigh Companies were advising their trade that their prices would not be advanced? I refer to Commission's Exhibit 1112-D.

A. I do not remember of it.

Q. Well, did the Monarch Cement Company follow the price change referred to in Respondents' Exhibit 3431?

A. We did not.

Q. Why not?

A. Well, we usually wait to see if it was general. In this case it was not.

42254 Q. Is the Monarch Cement Company a member of the Portland Cement Association, Mr. Brooke?

42255 A. Yes, sir.

Q. How long has it been a member of the Portland Cement Association?

A. Oh, I would say between 15 and 18 years.

Q. Did the Monarch Cement Company ever withdraw from the special dues obligations of the Portland Cement Association?

A. Yes.

Mr. Seeley: I ask to have a paper marked for identification as Respondents' exhibit.

(The document was marked for identification "Respondents' Exhibit 3432.")

By Mr. Seeley:

Q. Mr. Brooke, why, if you know, did the Monarch Cement Company withdraw from the special dues obligations of the Portland Cement Association?

A. Some of the larger shippers had withdrawn and we did not care to participate unless it was pretty general, and everybody shared the load.

Q. Showing you Respondents' Exhibit, for identification, 3432, does that serve to refresh your memory as to the date on which you withdrew,—your company withdrew from the special dues obligation of the P. C. A.?

A. It does.

Trial Examiner Norwood: What time was that?

The Witness: February, 1931.

42256 By Mr. Seeley:

Q. What time in February, Mr. Brooke?

A. February 25, 1931.

Q. At that time, in giving notice of your intention to withdraw from the special dues obligations, did your company continue its membership so far as general dues are concerned?

A. We did.

Q. Has the Monarch Cement Company ever resigned from the Portland Cement Association, so far as general dues are concerned?

A. No, sir.

Q. Did the decision of the Monarch Cement Company, or was the decision of the Monarch Cement Company to withdraw from the special dues obligations of the P. C. A. based upon any agreement as to base prices?

A. No, sir.

Q. Did it have anything to do with prices?

A. No, sir.

42258 Q. Mr. Brooke, did the Monarch Cement Company receive any invitation to bid on requirements for use at Wiota, Mont.? I refer to the so-called Fort Peck requirements.

A. Yes, we did.

Q. Did the Monarch Cement Company submit any bid in response to that invitation?

A. We did not.

Q. You did not bid on any of the lettings, so-called Fort Peck lettings?

A. I do not believe we did.

42259 Q. Well, of your own knowledge, Mr. Brooke, did the Monarch Cement Company submit any bid on the Fort Peck invitation?

A. I am pretty sure we did not.

Q. And why not?

A. After getting the filings of prices—that was during the N. R. A., as I remember it—we decided that the net that we would be able to get would not be of interest to us.

Q. Did the Monarch Cement Company have any agreement with competitors as to whether or not it would bid on the Fort Peck requirements?

A. No, we did not.

Q. Did the decision of the Monarch Company as to whether or not it would bid have anything to do with the form of the invitation as to whether it called for f. o. b. mill bids, or f. o. b. destination bids?

A. No. It was just a matter of getting there with a price low enough to get the business that would be of interest to us.

42260 Q. Mr. Brooke, do you recall any executive order of the President relating to a matter of selling cement below the prices that you quoted to your regular customers; that is, selling to the Government?

A. During the Code, do you mean?

Q. Well, I show you Commission's Exhibit 179, and ask you if that helps you.

Trial Examiner Norwood: That was during the Code.

A. Yes. I remember that.

By Mr. Seeley:

Q. Did the Monarch Company ever quote the Government below the prices it quoted its regular customers?

A. No, we did not.

Q. Why not, Mr. Brooke?

A. Well, we did not want the business that bad.

Trial Examiner Norwood: You quoted above,—

42261 you say you did not quote below.

The Witness: We did not quote below; we did not below our filed prices.

Trial Examiner Norwood: Just quoted your regular prices?

The Witness: That is right.

Trial Examiner Norwood: Dealer price.

By Mr. Seeley:

Q. Well, has your company ever felt that the Government was entitled to any special price as compared with your regular customers?

A. No. We were somewhat amazed at this order.

By Mr. Seeley:

Q. What do you mean by amazed?

A. Well, we thought it was out of tune with the provisions of the Code.

Q. I beg your pardon?

A. I say, we felt it was out of tune with the idea of the Code operation.

Trial Examiner Norwood: The N. R. A.?

The Witness: Yes.

By Mr. Seeley:

42262 Q. Did the Monarch Cement Company have any discussion,—any of its officials,—with any of its competitors, regarding this Executive Order?

A. No.

Q. To your knowledge, did the Code Authority take any position as to whether you should or should not quote the Government below your filed prices?

A. No.

Q. You say that you gave the Government the price as low as you gave your regular customers.

A. That is correct.

Q. But you did not give them any special prices?

A. No.

Q. Did you have any agreement with any of your competitors or with anyone else concerning whether you would or would not comply with the order?

A. No, sir.

Q. Did the Monarch Cement Company receive any invitation for requirements of the War Department for use at Tucumcari, N. M., in August, 1936?

A. I think so.

Q. I refer to Commission's Exhibit 170.

42263 Q. Mr. Brooke, I show you now Respondents' Exhibit, for identification, 3433-A to Y. I ask you

if you can tell us what those papers are and the source of them, if you know.

A. This is correspondence in connection with the bid for cement, invitation for bids on cement, Conshos Dam, Newkirk, N. M., September 4, and particularly in regard to the type of equipment specified.

Q. Did the Monarch Cement Company submit a bid in response to the Government's invitation?

A. We did.

Q. Did that invitation call for any special provisions regarding shipments?

A. It called for hopper-bottom cars.

Q. Do you recall your stipulated testimony with respect to the desirability, the comparative desirability of business of the Federal Government and business of your regular customers?

A. I do.

42264 Q. Well, I will ask you, Mr. Brooke, with respect
42265 to your stipulated testimony, have there been—what has been your experience, generally, with respect to the invitations of the Federal Government, and I want you to consider the period prior to the complaint. Have they or have they not called for special—contained special provisions which your company considered to be a burden as compared with its requirements of its regular trade?

A. I would say that this is typical of special requirements of the Government, and I do not mean by that that they always specify a special kind of equipment, but they do frequently specify things that are just as unusual as this is, in our ordinary run of business.

62268 Q. I show you, Mr. Brooke, Commission's Exhibit 1339. Do you recall that invitation, or receiving a copy of it?

A. Yes, I remember it now.

Q. Did the Monarch Cement Company submit any bid on that invitation?

A. We did not.

Q. Why not, if you recall?

A. Well, it was a little too complicated for me. I was afraid of it.

Q. What do you mean you were afraid of it?

A. Well, it had a great many provisions, such as l. c. l. deliveries, several different specifications and provisions for application an any job in which federal money might

be involved, including cement that we would ordinarily sell to our dealer customers, and it looked to us as though it was more in the form of an option than a bona fide proposal or would be if we received an award more of an option than actual order, so we decided not to bid.

Q. Did the Monarch Cement Company consult any of its competitors about that invitation?

42269 A. It did not.

The witness identified Resp. Ex. 3434 A to V as Monarch's file copy of a bid to the War Department, Fort Sill, Okla. and a report from its salesman who attended the opening of the bids. The salesman's report deals with the reaction of the major in charge toward f. o. b. mill bids.

42270 By Mr. Seeley:

Q. Did the Monarch Cement Company have any experience as to the reaction of Government purchasing officers prior to this instance, so far as f. o. b. mill bids are concerned?

A. Yes. We study the officers in charge and try to anticipate their desires, and try as near as we can to conform to their idea of what bid should be presented.

The witness identified Resp. Ex. 3435 A-P as Monarch's copy of file bid, December 24, 1936, to the Quartermaster's office at Fort Riley, Kansas. This invitation provided for a price f. o. b. Fort Riley, Kansas, and a price f. o. b. point of origin with the control clause included in the incitation.

Q. What control clause did you refer to?

A. A clause quite similar, if not the same, as the one that we had been using there and elsewhere.

Q. And how did you bid—did you comply with the request there?

A. Yes. We bid according to the invitation, delivered price and destination cost price with allowance for the—let's see; wait a minute—allowance for the emer-

42271 gency freight if shipped on or before January 1st.

Q. Now, as to both of these invitations to bid, were they—do they represent transactions in the regular course of the business of your company?

A. They do.

Q. And was it the regular course of business of the Monarch Cement Company to receive such invitations and to act on them?

A. Yes, sir.

Q. And do these papers represent the action taken by your company in connection with these prices?

A. Yes, that is the complete file.

Mr. Seeley: I offer those files in evidence (handing documents to Mr. Paulson).

Mr. Paulson: I object to Respondents' Exhibit 3434-A to V, for one reason, that it is dated April 2, 1940. That is after we closed our case; and, secondly, it contains much incompetent material. For instance, the first page is a letter by somebody, J. C. Batts, in which some very interesting statements from Counsel for the Respondents' point of view appears. The documents are irrelevant, immaterial, and incompetent.

I object to Respondents' Exhibit 3435-A to P, on the ground that it is irrevelant to any issue in this case, and on the further ground that the foundation is
42272 misleading. I heard a question, Was this bid typical? and now it becomes impossible to receive this because this bid could not be typical. The time when it was typical was not specified. We know that in this case there are many exhibits showing varying types of bids put out by some purchasing officers in 1935. They are all so different from the type of invitation in 1936. This is not typical. The record shows that it is not.

Trial Examiner Norwood: What is the date of those transactions?

Mr. Paulson: This is dated 1936,—December of 1936, but it goes to no issue, and only serves to confuse. It cannot possibly be received on the foundation laid. Now, they may be able to lay some other foundation, but not on the foundation they have laid.

42273 Trial Examiner Norwood: Now, I am asking you about Respondents' Exhibit 3435-A to P. You are offering this as an instance of where you bid f. o. b. mill in response to an invitation of the Government; is that right? What are you offering it for?

Mr. Seeley: We are offering that as an instance where the Respondent submitted a bid in compliance with the terms of the proposal in such form as it had found would be successful in getting the business, as shown by this bid, the papers in Respondents' Exhibit, for identification,
3434-A to V, and prior instances as to which the
42274 witness testified this was typical. Based on that experience which the company had in dealing with

Government officers, it submitted this bid, which we have offered in evidence, Respondents' Exhibit 3435-A to P.

Trial Examiner Norwood: Well, this Respondents' Exhibit 3434, this matter was not the basis of this other bid, was it?

Mr. Seeley: It is typical, the witness testified, of prior instances, of many instances that he had prior to this as to the reaction and attitude of Government officials.

Trial Examiner Norwood: I do not think you can show that in that way.

I will sustain the objection to Respondents' Exhibit 3434-A to V.

Now, as to this exhibit, Respondents' Exhibit 3434-A to P, if you will show me—I just cannot get clearly just what you want to show by this exhibit. Here is an instance of where they bid as the Government requested them to bid?

Mr. Seeley: Here is a case where the Respondent submitted a bid in response to this inquiry, and in terms which it had learned from experience in dealing with these Government invitations would get it the business, and we are showing why it acted as it did. Now, the
42275 charge is that it collusively refused to bid f. o. b. mill bids.

Trial Examiner Norwood: Here is a case that is not in line with what the complaint alleges; is that right?

Mr. Paulson: That is correct.

42276 Trial Examiner Norwood: The objection is sustained.

By Mr. Seeley:

Q. Mr. Brooke, in connection with this matter of your policy as to how you bid to get the business, let me ask you if you recall receiving any invitation to— First, I will ask you, has the Monarch Cement Company received requests from contractors or dealers for prices f. o. b. mill or quotations f. o. b. mill, or is the practice otherwise?

A. Not that I recall.

The witness identified Resp. Ex. 3436 as a letter from one of Monarch's contractor-customers asking for prices on cement at various destinations. They were with-
42277 in Monarch's sales territory. Prior to the complaint in this proceeding Monarch received many like that; similar to it.

Trial Examiner Norwood: Gentlemen, I want to invite your attention to the fact that we are laboring here with

many documents and questions to establish the fact that customers asked for destination prices, some customers asked for destination prices, when we have had a great deal of testimony on the subject, I suppose fifty to a hundred witnesses, and we have had testimony here
42278 that the Government makes its award on the basis of delivered costs and not otherwise. Why do we want to go through all this matter here and spend so much time and trouble on trying to continue to prove that same thing?

Mr. Seeley: May I ask Your Honor if the Counsel for the Commission concedes that that is the fact?

Trial Examiner Norwood: Well, he does not have to concede. Counsel for the Respondents should exercise some judgment about that.

Mr. Paulson: Counsel is familiar with the rules of evidence regarding cumulative evidence.

42281 By Mr. Seeley:

Q. Mr. Brooke, do you recall whether the Monarch Cement Company received an invitation to bid on cement for delivery at Rolling Fork, Miss., in 1935?

A. No, I do not. I have looked for the invitation in our files and it is not there, and apparently we never received it.

Q. Well, is that destination within your marketing area?

A. No, not ordinarily.

Q. Did the Monarch Cement Company receive any
42282 invitation to bid on requirements of the United States Government at Casper, Wyo., in 1934? I show you Commission Exhibit— You may answer, if you will.

A. We received a great many invitations for cement for delivery at Casper, Wyo. I cannot give you the particular dates, but we have received lots of them.

Q. Well, I show you Commission's Exhibit 753-E, and ask you if you recall receiving the invitation referred to therein?

A. I do not recall it, but we probably received it.

Q. Did your company submit any bid at that point, or for requirements to be used at that point?

A. I doubt it very much. If I remember correctly, the net there was too low for us.

Q. You say you doubt it. Do I understand that you would not bid on such business?

A. That is my recollection.

42283 Q. Has the Monarch Cement Company ever solicited any business or shipped any cement into Wyoming?

A. I do not remember of making any shipments there. We certainly do not travel the territory or solicit it regularly.

Q. Has the Monarch Cement Company ever shipped any cement or solicited any business in Colorado, Texas, or Utah?

A. We make shipments to certain parts of Texas and occasional shipments to Colorado, but we never have,
42284 so far as I know, shipped into the State of Utah.

42285 Q. I will show you, Mr. Brooke, Commission's Exhibits 1387 and 1389, from which it appears that the Monarch Cement Company received the invitations about which I inquired. Does that serve to refresh your memory?

A. That is for the States of Utah and Colorado?

Q. Yes.

A. I recall such a bid.

Q. Such an invitation?

A. Such an invitation.

Q. Did your company submit any bid?

A. We did not.

Q. And why not?

A. Well, Utah is too far removed for us to con-
42286 sider, and we did not know how to bid Colorado on a mill basis and be competitive, and we did not know where the cement would be used or finally be shipped.

Q. When you decided not to file any bid, did you make any explanation for not doing so?

A. No, sir.

Q. Mr. Brooke, I want to ask you what your experience has been with the bulk cement. You said this morning that at the time you prepared the conversion table, which has been introduced into evidence, that you had no demand for bulk cement subsequently or since that time. I will ask you since you have been with the Monarch Cement Company, have you made shipments or sales of cement in bulk?

A. Yes, sir.

Q. What has been your price on such shipments as compared with the price of your product in packages?

A. It has been less.

Q. And has there been any change in the difference between prices for bulk and package cement since you have been with the company?

A. Yes, sir.

Q. When did you make that change?

A. Well, I do not remember the date.

Q. Well, what was the occasion, if you recall?

A. Well, my recollection is that when we first
42287 started to ship in bulk that we charged 50 cents a barrel less for cement in bulk than we did in cloth, and some time possibly—well, I do not know as I would want to venture the date, but it was a good many years ago, we found that some of our competition were quoting 45 cents differential instead of 50.

Q. How did you find that out? Was it—Go ahead and answer.

A. Oh, I don't remember. I think it occurred in connection with some State highway work in Missouri.

Q. You observed that fact from the opening of the bids on a Missouri State Highway letting?

A. I do not know whether it was on bids to the Highway Department or to the contractors. I do not recall now. There was a change. Missouri quit asking for bids on cement and permitted the contractors to furnish their own cement.

Q. What was the result of the change? What change in the difference between bulk and package cement resulted?

A. It made a difference of five cents per barrel.

Q. Did you make that difference in your prices?

A. Yes.

Q. Did you follow that?

A Yes.

Q. Did you have any agreement or pre-arrangement to do so?

A. No, sir.

Q. Was there any time during that period you have testified about, Mr. Brooke, when the State highway
42288 departments, or any of them, prohibited the use of bulk cement?

A. I seem to remember that there was a time when the State highway departments frowned on the use of bulk cement or perhaps prohibited it. I know the practice, the switch from cloth sacks to bulk on highway work was gradual. It did not come suddenly.

Q. Your company, I take it, sells cement to railroads?

A. We do, yes.

Q. How do you quote to railroads?

A. We quote the railroads on whose lines—on whose rails reach our plant, our mill base, or if there is a mill base that we know of at a plant on their rails that is lower than ours, we quote the base as a price. The railroads whose lines do not reach our plant we quote the lowest known base on their rails, f.o.b. the nearest junction point from our mill.

Q. How do you ascertain what your competition is with respect to sales to railroads?

A. We get that by solicitation of the railroads.

Q. Has there been any change in your practice with respect to sales or quotations to railroads since you have been with the company?

A. I neglected to mention we also quote railroads delivered at destination if they request it; that is, the destination points on their lines.

Mr. Seeley: Could I have my previous question read?

42289 Trial Examiner Norwood: Read it.

(Question read.)

A. Oh, not that I recall.

Q. Mr. Brooke, this morning I questioned you concerning the withdrawal by the Monarch Company from the obligations, the special dues obligations of the Portland Cement Association, and you told me, or told us, on what date your company withdrew. Did your company subsequently resume the special dues obligations of the Portland Cement Association?

A. We did.

Q. I show you Respondents' Exhibit, for identification, 3437, and ask you what that is.

A. This is a memorandum in the handwriting of our auditor, T. A. Railsback.

Q. What does that show?

A. To the effect that the special dues were discontinued March, 1931, and resumed January, 1933.

Q. Was that made at your request?

A. Yes.

Q. Was that made from the records of your company?

42290 A. Yes, sir.

Q. And can you tell us why the Monarch Cement Company resumed the special dues obligations in January, 1933, of the Portland Cement Association?

A. Some of the larger shippers in the territory that we serve resumed their payments of special dues, so we were willing to share the expense.

Q. Does the Monarch Cement Company have a so-called mill base at its plant?

A. We do.

Q. How long has the Monarch Cement Company had a so-called mill base at its plant, to your knowledge?

A. Oh, in effect we have always had it, but to openly announced, I suppose since probably 1930, maybe, somewhere around there, 1933.

Q. You say in effect. What, may I ask you, did you mean that you had always had it in effect?

A. Well, our mill is about 9 miles from the Lehigh plant at Iola, Kansas. The Ash Grove plant is 9 miles south of us. The fact as to whether or not we have a mill base does not make very much difference.

Q. Well, how many dealers, if you know, Mr. Brooke, do you quote prices that relate to your mill base?

A. I do.

Q. I say, to how many of your dealers do you
42291 quote prices that are related to your mill base?

A. About, oh, not over three.

Q. Well, what do your sales to those dealers amount on the average, do you know or have you ascertained what they amount to during the past 10 years, annually?

A. Oh, not to exceed 3,000 barrels annually.

Q. That is to the entire three dealers?

A. Yes, sir.

Q. Well, tell me why, Mr. Brooke, do you quote prices to your dealers that relate to your mill base?

A. Well, if we did not have this mill base, and based our delivered prices on, say, Iola, of today, that would mean the freight from Iola to Humboldt, I believe, is 36 cents a barrel, a dealer at Humboldt would not be in the
42292 position to compete in neutral territory with the Iola dealers with that disadvantage.

Q. Isn't that the reason that you quote prices to those dealers that relate to your mill base?

A. Yes, sir.

Q. Mr. Brooke, we were talking about the matter of your mill base a moment ago. I want to ask, have you ever notified, or has the Monarch Cement Company ever notified its competitors or any of them that Humboldt should or should not be considered a mill base?

A. We have not.

Q. And have you ever given out any figures,—any particular figure,—as a mill base figure at Humboldt to any competitor?

42293 I refer to Commission's Exhibits 1188-A, 1125, 1114-A and B, 1118-C.

A. No, sir.

Q. With respect to your use of the freight rate books, Mr. Brooke, to which your stipulated testimony refers, did the Cement Institute ever give out any instructions to the Monarch Cement Company or to any other cement company, to your knowledge, that the rates in The Cement Institute books were to be used whether right or wrong?

A. No, sir.

Q. Well, have you ever used any rate that you found to be wrong?

A. We might have—that we found was wrong? No.

Q. First, I will ask you whether you ever did find any errors?

A. Oh, I don't know. We might have in the period that we have used it found a few errors, possibly did.

Q. You mean in the 10-year period that you have been using it?

A. Yes.

Q. My other question was, have you ever used any rate—that is, any rate other than you found to be the correct rate?

A. No. We would not do it purposely. If we found the rate in the Institute book was different from that of the tariff, we would give the tariff rate preference.

Q. Has the Monarch Cement Company allowed
42294 some of its customers discount terms more favorable than its published terms?

A. Yes, we have. We have.

Q. Has the Monarch Cement Company taken bonds and tax bills in payment for cement?

A. We have.

Q. Is that true—does your answer obtain for a period

after you joined the Institute prior to the N.R.A. Code, I am speaking of?

A. It is true of all the periods, I would say, during the time the N.R.A. Code was in effect.

Q. Has the Monarch Cement Company loaned equipment to contractor-customers?

A. We have.

Q. Does your answer hold for the period after you joined the Institute?

A. Yes, sir.

Q. Referring to your answer with respect to acceptance of bonds and tax bills in payment for cement. Does that answer apply as well to the period between the Code and the date of the complaint in this proceeding?

A. That is on tax bills?

Q. Yes.

A. I would not be sure of that. I rather think so.

Q. Well, I will ask you whether you have any
42295 customers named Builders Supply Company of Tulsa?

A. We have, yes.

Q. And Hughes Stone Company of Tulsa?

A. That is right.

Q. And Porter Construction Company?

A. That is right. That is, they were customers, you mean?

Q. And the Fry Brothers of Marshall?

A. That is correct.

Q. And B. E. Koch?

A. Yes, sir.

Q. Can you state now whether you have accepted payment for cement in such tender between the N.R.A. Code period and the date of the complaint in this proceeding?

A. No. I believe they were all prior to the Code. I am not sure.

Q. But subsequent to the time you joined the Institute?

A. Yes.

Q. Does the Monarch Cement Company have any stockholder in Nebraska? I am referring now to Commission's Exhibit 971-23-N to S.

A. Yes, we have.

Q. Well, tell us whether that stockholder is also a customer of the Monarch Cement Company in Nebaska?

A. George P. Abel, of Lincoln, Nebr., and the Abel Construction Company, and a few of his associates had
42296 an investment of, I will say held four and five thousand shares of the Monarch Cement Company stock. George P. Abel is now dead and the stock is held by the Abel Construction Company, his estate, and I believe some of it has been distributed to the heirs of the estate.

42297 Q. My question, Mr. Brooke, was: What has been your experience with respect to business in Nebraska?

A. We have shipped some cement to the—our customer and director and his company, but we have not supplied him with all his cement requirements, by any means.

Q. And why not, if you know?

A. Well, we have been unable to meet the prices that he claimed to have particularly on highway work in Nebraska.

Q. How did those prices compare with the published quotations or the market prices in Nebraska on the date in question or at any time that you have solicited that business?

A. They were considerably less.

By Mr. Seeley:

Q. They were below published prices of the competitors who were getting the business?

A. Yes, sir.

42298 Q. You mentioned highway work, Mr. Brooke. How much, do you know, has that highway work amounted to during the perjod since you have—well, I will ask you in the last 10 years.

42300 A. The Abel Construction Company, who has the investment in the company that I just explained—that is, the Abel Construction Company, and their subsidiaries, and subsidiary companies, have used in Nebraska over the last 10 years something over a million barrels of brands other than Monarch, which business we were unable to secure, being unable to meet the prices they had on account of the differences in the freight rates from our mill to the competing mills.

42302 Q. Well, apart from the cement consumed by this customer, the Abel Construction Company, Mr. Brooke, I want to know whether the Monarch Cement Company, has sold cement at prices below its published prices.

I am speaking now of the period since you have been with the company, since you came with the company up to July 1, 1937.

A. In Nebraska, or the whole territory?

Q. All over your sales territory.

A. What was the period again?

Q. Any time prior to July 1, 1937.

A. We have.

42304 By Mr. Seeley:

Q. Now, I want to ask you, Mr. Brooke, whether the cement which the Monarch Cement Company has sold at prices below its published prices included sales to dealers as well as sales to confractors?

A. It has.

Q. And does it include sales to dealers for cement to be used in W.P.A. work?

A. It has.

Q. Does it include cement that has been sold for use in city paving and ready-mix plants?

A. Yes.

Q. Does it include cement, so far as you know, that has been used in bridges and culverts or highway paving work?

A. Yes.

Q. And cement that has been used in concrete products plants?

A. Yes.

Q. Has the Monarch Cement Company ever had any agreement to adhere to its list of published prices?

A. No, sir.

Q. I show you, Mr. Brooke, Commission's Exhibit 561. Do you recall that so-called Compendium?

A. Yes, I have seen it before.

Q. Has the Monarch Cement Company made any use of that booklet?

42305 A. No, sir.

Q. Did the Monarch Cement Company make any change in its practices or policies upon receipt of that booklet?

A. No, sir.

Q. Or since the receipt of it,—as a result of the issuance of the booklet?

A. No, sir.

Q. Mr. Brooke, in the event a price changes, does the Monarch Cement Company allow its customers any protection against changes in price?

42306 A. We do.

Q. And, briefly, tell us what that is.

A. Well, on a decline we usually adjust the price, or, I would say, we do adjust the price on shipments made a few days prior to the decline, and on an advance we accept orders for shipment within—that may be shipped within 15 days from the date the order is placed.

Trial Examiner Norwood: That is just the usual way that it is handled by all the trade that you know anything about; isn't it?

The Witness: Well, yes. We meet that competitive situation.

Trial Examiner Norwood: You do not know of any exceptions to that, do you?

The Witness: Oh, there are exceptions to everything in the cement business.

Trial Examiner Norwood: I say, do you know any?

The Witness: Oh, yes, yes.

Trial Examiner Norwood: What are they?

The Witness: Well, we might—sometimes you will book an order for 15 days, or maybe two or three cars for one dealer, and he will ask you to extend the last one over 20 days or 25 days, and sometimes we do that.

Trial Examiner Norwood: Other companies do, too, don't they?

42307 The Witness: Yes.

Trial Examiner Norwood: Go ahead.

By Mr. Seeley:

Q. Well, my question, Mr. Brooke, was directed to the period that your company endeavors to protect its customers in the event of price changes. Is that flexible—does it vary with the customer at which your desire to hold the customer, or is it fixed?

A. Well, there are lots of variations.

Trial Examiner Norwood: He just explained that to me.

The Witness: Part of the every-day business to meet these different deals that come up a little better than the ordinary.

By Mr. Seeley:

Q. And how long has it been your practice to meet the circumstances of each case?

A. We have always tried to do that.

Q. You never had any fixed practice about it?

A. No.

Q. Did your company ever have any agreement with competitors or any arrangement for any period of allowing customers the benefit of price changes?

A. No, sir.

Q. Now, with respect to these so-called specific
42308 job contracts, Mr. Brooke, I want to direct your attention to a period prior to the complaint, and ask you how does the amount of cement which the Monarch Company sells, or has at any time prior to the complaint covered by these so-called contracts compare with the amount of cement that you have shipped on jobs never covered by any contract, or on which no contract was entered into? Can you give us some idea?

A. Well, the oral contracts would exceed the written contracts.

Q. Well, how would they compare in percent of your total shipments? I am speaking now of cement which you have sold for future delivery.

A. Oh, if we supply 150,000 barrels on contract, we probably would not actually have over 50,000 barrels or a hundred thousand under contract. There are very few highway contractors or paving contractors that make contracts any more. They know they will be protected if the price goes up, and always had a hope that somebody will give them a better price on the entire order, or the unshipped order clear up to the time the job is finished.

Q. And in the cases where you do not execute a contract to cover the job, do you protect the customer there in such cases as well?

A. Well, if the market advances we might write a con-
tract for the unshipped balance, or we might go
42309 ahead and ship it without a contract at the original price.

Q. Do I understand that if the market goes up you protect the customer, anyway?

A. Yes, sir.

Q. And if the market goes down and you have already sold the cement—

A. The customer has all the protection.

Q. Has your practice ever been otherwise since you have been with the company?

A. No, sir. You are referring now to protection in price.

Q. What are your terms of sale, Mr. Brooke?

A. Our printed terms is 30 days net to discount of 10 cents per barrel for payment within 15 days from date of invoice.

Q. You mean your published terms?

A. Yes.

Q. And do I understand you do not adhere to them at all times?

A. We vary from them.

Q. Did the Monarch Cement Company at any time have in its published terms a so-called trade discount?

A. Yes.

Q. When was that?

A. I do not remember the period. It seems to me it was of short duration, probably four or five or six months.

Q. How did you come to adopt that plan or policy, Mr. Brooke?

42310 A. Oh, some of our competition put it out, and dealers thought it was a fine thing. We adopted it rather than have the dealers feel we were not in sympathy with their business methods.

Q. Well, I take it that you did not think that such—you do not offer such a discount at present. When did you discontinue it, and why?

A. We discontinued it as soon as there were a sufficient number of our competitors discontinue it; that is, to a point where we thought the dealer criticism would be at a minimum. We did not like it, were not in favor of it, and we always felt that it was the dealer's province to name his own margin of profit. It is difficult to set an arbitrary figure that is fair and acceptable everywhere.

Q. Do you recall a so-called Lehigh selling plan?

A. Yes.

Q. I show you Commission's Exhibit 971-33-L to 34-O, and ask you if that is the plan that you refer to.

A. I do not recall this particular booklet. Is this the

one where you get the nickel back at the end of the year?

42311 Q. Yes, Mr. Brooke. This among other things does refer to such a plan.

A. Well, if that is it, that is one we did not fall for. We never adopted it.

Q. What do you mean by saying that you did not fall for it?

A. We did not adopt it.

Q. Why not?

A. Well, we did not think it was practical.

Q. Did you ascertain the attitude of your dealers toward it?

A. Yes, we heard plenty from the dealers in regard to it.

Q. Did you have any contact with your competitors in regards to your terms of sale or discount, Mr. Brooke?

A. No, sir.

Q. Mr. Brooke, did the Monarch Cement Company receive any invitations for bids on the Conshos Dam, N. M., in September, 1937? I refer to Commission's Exhibit 176.

A. We had several invitations to bid on the Conshos Dam. I cannot identify that particular date.

Q. Well, I show you this invitation, Commission's Exhibit 176-C, and—

A. Is there a tabulation of the bids here? The bidders? Yes, we were one of the bidders.

Q. Mr. Brooke, does the Monarch Cement Company have a dealer by the name of the Nold Lumber Company?

A. C. H. Nold Lumber Company, St. Joseph, Mo.

42312 Q. Does the Monarch Cement Company have any practice at present of stamping its bills of lading with a notation prohibiting the reconsignment in transit?

A. Yes, we have.

Q. How long have you had that practice, Mr. Brooke?

A. Oh, I don't remember. It has been quite a period. I do not remember the exact date when we started it.

Q. Well, how did you come to adopt it?

A. We had some difficulties with diversions about the time the W.P.A. or the emergency relief work started, and the dealers seemed to think that we were parties to these diversions, and called their attention to a way to prevent it, and in that way was this stamp—that is the

way that happened to adopt it, because the dealers that were not diverting expected us to protect them against other dealers that would divert.

Q. Did your dealers complain to you about the diversion?

A. Those that were affected by the diversions of our cement complained, and that puts it rather mildly.

Q. Well, does your company have any policy of declining to ship to your dealers at points where they do not have any place of business?

A. Yes, we consign shipments to dealers at their places of business.

Q. How long have you had such a policy?

A. Well, that has always been our policy.

42313 Q. You say always; since 1918?

A. Yes.

Q. And what is the basis for that policy, so far as your company is concerned?

A. Well, that is just good business. You could not stay in the good graces of the dealers unless you did do it unless we did do it.

Q. Did your adoption of that practice of stamping your bills of lading, was that due to any contact with your competitors, Mr. Brooke?

A. No, sir.

Q. Did you have any communication or contact with your competitors about it?

A. No, sir.

42315 Q. Mr. Brooke, do you recall the circumstances surrounding the application of Monarch Cement Company for membership in The Cement Institute?

42316 A. No, I do not.

By Mr. Seeley:

Q. Well, what is your understanding of the functions and purposes of The Cement Institute? I am speaking now of the period between when your company became a member and the date of the complaint in this proceeding?

A. Well, it had several objects set out in their by-laws or articles of incorporation, whatever they call them.

Q. Well, you mentioned your stipulated testimony mentions the freight rate service which you received. Did you receive any other services?

A. Yes, we got certain statistics of shipments, production.

Q. Well, what use, if any, did you make of those statistics on shipments and production?

A. Well, we were interested in the total shipments for the district, and other districts, for that matter, in a casual way, and total consumption, and production of shipments in the United States. We were more particularly interested in whether or not we were shipping a reasonable percentage of the total in the district in which our mill is located.

Q. How did the use you made of those statistics differ from the use you made of the Bureau of Mines' figures, which you told us about this morning?

A. There was no particular difference. I believe the Institute report showed some individual figures, but
42317 the particular advantage was that we got the report a little quicker.

Q. Quicker?

A. They also had a forecast of the probable percentage in decrease or increase in shipments for the district, different districts.

Q. Did you consider that service of any value to your company?

A. Yes, we did.

Q. Did you make any use of the figures on individual shipments?

A. No, except to observe what the mills were doing who served practically the same territory that we did, in other words.

Q. You mean the competitors in your Bureau of Mines' district who were your direct competitors?

A. Yes, whose normal trade territory was.

Q. The same as yours?

A. Synonymous with ours.

Q. Did the Monarch Cement Company resign from the Institute subsequent to the time it joined?

A. Yes.

Q. What was the reason, Mr. Brooke?

A. Well, there had been several resignations from the Institute, and it looked like it was folding up, and we were trying to economize, so we resigned.

42318 Q. Did your company subsequently rejoin the Institute?

A. Yes, sir.

Q. And when was that?

A. It was revived about the time the N.R.A. was in the picture, and revived principally I think as a vehicle to handle that matter.

Q. Is that why you rejoined?

A. Yes.

Q. Was anybody in your company ever a member of the Code Authority?

A. No, sir.

Q. Have you or any other official of your company ever been an officer of The Cement Institute?

A. No, sir.

Q. Have you personally attended meetings of The Cement Institute since the N.R.A. Code period?

A. Yes.

Q. Can you state whether the members of the Institute at those meetings, or any of them, have concerned themselves with prices or marketing policies or practices?

A. I never heard them discuss it.

42319

Washington, D. C.,
Thursday, June 27, 1940.

42320 CHESTER A. BROOKE, thereupon resumed the stand and testified further as follows:

Direct Examination by Mr. Seeley (Resumed).

Q. Mr. Brooke, we were talking yesterday at the close of the hearing about The Cement Institute. Do you recall a Trade Practice Committee of The Cement Institute?

A. Yes, sir.

Q. What was your understanding of the purpose of that committee?

A. That was a committee delegated to carry on the practices of the N.R.A. pending the time when we thought something would be developed to take its place.

Q. Did you or did you not feel that the Trade Practice Committee had any authority or power?

42321 A. Well, we thought it was the wish of the Administration, at least from the press reports we had seen and information we had picked up, that it was the intention of the Administration to attempt to substitute for the N.R.A.

Q. Do you recall, Mr. Brooke, attending a meeting of The Cement Institute in June, 1936, with reference to future activities of the Institute?

A. I believe I was there.

Q. Do you recall whether there was any discussion concerning the dissolution of the Institute at that meeting?

A. Yes, my recollection was there was quite a little sentiment in favor of dissolution.

Q. And what was the attitude of the Monarch Cement Company at that time?

A. We were against the dissolution.

Q. Why?

A. Well, we felt the need of the organization; at least we thought it was worth while for the freight service alone.

Q. Do you mean worth while to your company?

A. Yes, sir.

Q. Did you have in mind any other service that the Institute could furnish or could present?

A. Well, I like to see the industry organized, have some organization of that kind to take care of any emergencies that might arise.

42322 Q. By "emergencies," do you refer to your previous testimony concerning the N.R.A.,—the revival of the N.R.A.?

A. Well, I do not remember just what that testimony was, but frequently—at least occasionally—there are times when it is right convenient to have an industry organization of that kind.

Q. What has been your experience, while the Monarch Cement Company has been a member of the Institute, has the Institute taken any part in competitive matters in any of your sales territory?

A. No, sir.

Q. Do you recall, Mr. Brooke, any correspondence of yours with reference to a cement plant at Hartshorne, Okla.?

A. I remember that there was such a plant.

Q. Well, I refer to Commission's Exhibits 197-A, B, P, Q, and V. What was the tenor of that correspondence, and what was the occasion for it, Mr. Brooke, if you recall?

A. Why, I don't remember just what it was.

Q. Well, I show you these Commission's exhibits, to which I have referred, and ask you if that refreshes your memory.

A. Yes, I remember the case now.

Q. What was your interest in the plant at Hartsborene, or proposed plant at Hartshorne, Okla., Mr. Brooke?

A. Oh, we were interested in the gossip that was going around that this cement plant was to be received, and from a selfish standpoint, of course, we did not want to see
42323 another plant, another cement plant in the territory that we served, which had more than ample capacity already.

Q. Well, what was your purpose in passing that information to the other people in that chain of correspondence?

A. Well, Mr. Reynolds, of the Information Bureau, was sending us clippings and information that he thought was—apparently thought was of interest to us, and I thought here was something in which the industry would be interested, and I reciprocated by passing the information on to him.

Q. How did you happen to write to Mr. Thompson about the matter?

A. I do not know that I did write Mr. Thompson.

Q. Well, did you have any communication or conversation with him about it at all?

A. This letter indicates—one of these letters indicates that I talked to him. I may have asked him in a casual way what he knew about it. He would be—at least I would have thought—he would be interested, having a mill in the same State.

Q. Do you have a contractor-customer, Mr. Brooke, by the name of Cook?

A. Yes, sir.

Q. Does that contractor do business in Colorado?

A. Yes, he bids on highway work in Colorado.

Q. Has he ever had occasion to request any quo-
42324 tation from you for work in Colorado?

A. Yes, occasionally.

Q. Do you have any dealer customers in your regular sales territory who have line yards in Colorado?

A. Yes, we have.

Q. Do you sell regularly in Colorado?

A. No.

Q. Is that part of your regular sales territory?

A. No, only occasionally.

Q. Do you recall writing to Mr. H. O. Warner, of the Colorado Portland Cement Company, in August, 1935, concerning the sales policies prevailing in Colorado?

A. I do.

Q. Well, what was the occasion for that correspondence? I refer to Commission's Exhibit 947-10-A and B.

A. Mr. Cook is a contractor and a director in our company, and occasionally asked me for prices for delivery in Colorado, that being a territory that we do not ordinarily sell or have no traveling representative, I was not sure of the method in which highway work was being generally sold. I wanted to quote Mr. Cook a price that would enable him to secure the contract, at least not put him to a disadvantage, and I did not want to quote it in such a way that would bring any antagonism from our dealer customers.

Q. Do you mean your dealer customers in your
42325 regular sales territory who have line yards in Colorado?

A. That is correct. So Warner, being a personal friend of mine, I simply dropped him a line, took the short-cut to believing if they had a published policy that he would send me a copy of it. That was a time when sales policies were pretty generally circulated throughout,—at least the territory that we served.

Q. What was the policy of the Monarch Cement Company on this type of business on which you received this inquiry—that is, I want to know what the policy of your company was in its regular sales territory in Kansas, for example, on this type of business?

A. We were selling contractors direct on highway paving, and I believe grade elimination at the time; at least on highway paving; whereas, bridges and culverts were being sold to the dealers.

Q. What was this type of work on which you had received the inquiry for quotation in Colorado?

A. Bridges and culverts.

Q. And how was the Monarch Cement Company at that time selling such work in Kansas?

A. To the dealers.

Q. Could you determine—first, I will ask you, did you get the business on this job in Colorado about which you received an inquiry?

42326 A. No.

Q. Did you determine how that job was sold? Did it come to your knowledge ultimately—you mentioned Mr. Cook.

A. Well, as I remember it, Mr. Cook's superintendent was able to get a better price on cement in Colorado than we quoted him.

42327 Q. You told us, Mr. Brooke, how you were selling that type of work, how the Monarch Cement Company was selling that type of work at the time in its regular sales territory. Now, I ask you: Has the Monarch Cement Company sold cement for highway maintenance to State highway departments?

A. In Kansas, do you mean?

Q. Well, in your sales territory generally.

A. Yes.

Q. And on what basis have you sold that cement?

A. Direct to the State highway departments.

Q. Well, where you sell cement to contractors for highway or other work, what has been your practice in your company as to the period for which you would cover the job,—do you make any limitation?

A. Well, we extend the delivery to meet the requirements of the period of construction.

Q. Have you sold any cement for bridge jobs direct?

A. Yes, when it might have been classified as a grade-crossing elimination or sometimes called bridges.

Q. Does the Monarch Cement Company sell any cement direct to counties?

A. No, sir.

Q. Has it ever sold direct to counties,—your company?

A. Not for a good many years. We may have in times past. I am not sure about that.

42328 Q. In selling to railroads, Mr. Brooke, what has been the experience of the Monarch Cement Company with respect to the period for which the job is covered or protected? First, tell me what sort of inquiries do you receive from railroads? For how long a period do they ask for prices?

A. Some of the inquiries are in the form of orders or shipping instructions with the price specified on the order. Some are for quarterly requirements. Occasionally, we quote for some specific job. We have not had any of that kind recently, but we have extended the delivery to suit—in accordance with the construction period of the particular job.

Q. You mean that the Monarch Cement Company does not place any limitation on the period in selling those?

A. Within reasonable limits, a year and a half; something like that.

Q. Do you have any fixed rule?

A. No.

Q. How long has that been your policy, making
42329 quotations on such work?

A. Oh, away back fifteen or twenty years, I imagine.

Q. Well, where the Monarch Cement Company quotes a price to railroads f.o.b. their rails, the nearest junction, which you told us you did yesterday in some cases, does the Monarch Cement Company absorb the freight to that junction?

A. We do.

Q. Does the Monarch Cement Company sell direct to block manufacturers?

42330 A. We do.

Q. How long has your company sold direct to the block manufacturers, Mr. Brooke?

A. Oh, since 1918, to my knowledge.

Q. And have you had, during that time, block manufacturers who were also dealers?

A. Yes, sir.

Q. And have you had some block manufacturers to whom you sold to the dealer for re-sale to the block manufacturer?

A. Yes, sir.

Q. Did the block manufacturers who you sell through the dealer ask you for or request direct quotations
42331 from you, or did they ask to be sold through the dealer?

A. Oh, some of them might have; I do not remember. Usually, the block manufacturers that buy through the dealers are small operators and avail themselves of the services and credit facilities, and so forth; storage.

Q. Well, has your company been prepared to sell those customers direct, if requested?

A. I do not think we have denied any of them.

Q. I now ask you with respect to concrete products—I mean, to ready-mix plants; do you sell such customers direct?

A. Both ways.

Q. Both ways. What is the criterion by which you determine how you will sell them?

A. Well, we sell them direct if they desire to be sold that way.

Q. How long has that been your policy?

A. Ever since ready-mix plants came into use.

Trial Examiner Norwood: Now, didn't this witness testify that he did not observe any of those printed policies that were circulated and that he found in the field? Didn't he testify to that?

Mr. Seeley: I do not recall.

Trial Examiner Norwood: Did you adopt any of those policies that your salesmen found in the field?

The Witness: We adopted them but haven't lived
42332 up to them strictly. I think that was the basis of my testimony.

Trial Examiner Norwood: You lived up to them in some particulars and in some you did not?

The Witness: Yes, sir; we varied from them as the circumstances arose.

Trial Examiner Norwood: Yes.

By Mr. Seeley:

Q. Mr. Brooke, does the Monarch Cement Company, in selling to dealers, give any consideration to whether or not the dealer is a member of an association?

A. No, we do not.

Q. Has the Monarch Cement Company ever had any understanding or contacts with competitors concerning who should be recognized as dealers?

A. No.

Q. Or what qualifications you would consider necessary to your dealers?

A. No. We pass judgment on that ourselves.

Q. Well, just in one final question, Mr. Brooke: Since you have been with the company, I want to know what has been the practice of the Monarch Cement Company in its sales policy,—has there been any time when you had any fixed set policy or has your policy varied?

42333 A. We have had no absolutely fixed policy. We have tried to decide, or we have decided each case as it comes up.

Q. Do you decide that on your own judgment?

A. Yes, sir.

Q. Mr. Brooke, do you recall any meeting in Chicago in 1930 at which the subject of price bases was discussed?

I refer to Commission's Exhibit 1202-G to H.?

A. No, sir.

Q. Well, has the subject of price bases ever been discussed at any meeting of cement executives that you attended?

A. No, sir.

Q. To your knowledge, has the mill base at your plant or at any other plant,—any other cement plant,—depended on the outcome of any meeting?

A. No, sir.

Q. Well, I will say this, your stipulated testimony, Mr. Brooke, shows that the Monarch Cement Company sells at some points in the State of Iowa. Do the prices
42334 which your company charge for its cement anywhere in the State of Iowa have anything to do with short-haul rates from Humboldt or from Bonner Springs, or from any other mill base?

Mr. Paulson: I object. Prices are made,—the witness has told us in the stipulation,—by the basing-point system.

Mr. Seeley: Well, I am referring specifically to record page 18961 to 18975, which the Commission Witness Simpson testified concerning how the structure of prices at certain times— I think the witness can tell us; he sells in that territory.

Trial Examiner Norwood: The objection is overruled.

A. Our sales in Iowa are quite limited, I think possibly, to Council Bluffs, Sioux City, and one or two other points, and they are sold at, usually the lowest delivered price that we know about.

By Mr. Seeley:

Q. Well, my question was, are those prices at which you sell any of those towns determined, or do they relate to any so-called short-haul rates that you know of?

A. Not that I know of.

Q. Well, are there any short-haul rates in any part of your sales territory, to your knowledge?

A. Not that I know of.

Q. Has the Monarch Cement Company ever
42335 taken any part or ever made any efforts to secure short-haul rates?

A. We have not.

Q. We mentioned yesterday, Mr. Brooke the use that

your company makes of freight rates, freight rate information. Will you tell us briefly what you do in your company for routing?

A. We check the tariffs where there is any doubt of it. Of course, we are shipping—our shipments are mostly repeat shipments, and the traffic man knows those routes pretty well from memory. I would say the occasion to check routing would be where several routes are open and one particular one is requested, he would probably check it to be sure that the rate applied via that route.

Q. You mean you would check it with the tariff?

A. Yes.

Q. Can you recall any cases where the Monarch Cement Company made a shipment without designating the route or knowing the route?

A. No, sir.

Q. Mr. Brooke, does the Monarch Cement Company make inquiries of railroads regarding the land-grant rates?

42336 A. We do.

Q. How long has that been your practice?

A. Oh, ever since we have been using them.

Q. Does your answer apply to all of the railroads that serve your territory on which land-grant rates apply?

A. Yes. We secure rates from all of them.

Q. What has been your experience,—have the railroads or have they not cooperated with you in furnishing land-grant rate information?

A. They have freely cooperated.

Q. Have you ever had, or any officials of your company, to your knowledge, conferred with competitors as to what land-grant rates you would use?

A. We have not.

(The foregoing testimony beginning "Mr. Brooke, does the Monarch Cement Company make inquiries" was adopted by Georgia and Oregon.)

Q. Can you tell us, Mr. Brooke, whether your company has used the so-called control clause in bidding where land-grant rates were involved?

A. We have.

Q. I show you Respondents' Exhibit, for identification, 3438, and ask whether you can tell us when the Monarch Cement Company first used so-called control clause?

A. This notation on the letter would indicate that we commenced the use of it about the date of this letter.

Q. What is that?

A. May 23, 1934.

42337 Q. Can you identify this letter?

A. Yes, a letter from George H. Reiter, secretary of the Code Authority, to several cement companies, Monarch included.

Q. And the subject matter in just one sentence is what?

A. Control clause.

Q. In bidding to the Federal Government has the Monarch Cement Company ever considered that it was obliged to employ any particular method of bidding?

A. No, sir.

Q. Did you or any one in your company, to your knowledge, discuss the control clause with competitors?

A. No, sir.

Q. Mr. Brooke, yesterday you mentioned a so-called decline clause. I want to know whether in responding to Government proposals has the Monarch Cement Company ever inserted any collateral terms in its bids?

A. Just what do you mean by collateral terms?

Q. Well, have you ever added any riders to your bid which were not called for in the invitation?

A. Oh, yes, lots of them.

Q. Well, have you added any riders relating to the privilege or benefits of a decline clause?

A. We have.

Q. And what was your experience with respect
42338 to the reaction or disposition of your rider?

A. Well, our experience is more pronounced in failing to add it; we found that our bid was considered high by reason of the fact that it was not in there.

Q. Well, do you recall any occasion where your bid was thrown out as not conforming to the terms of the invitation?

A. No, I do not recall any particular instance.

Q. Yesterday, Mr. Brooke, you told us about the mill base at Humboldt, Kansas. What did you find as to the volume of your business? Was it affected, or increased as a result of your issuance of quotations reflecting a mill base at your plant?

A. No. There was no perceptible change.

Q. Do you recall your testimony of yesterday con-

cerning the quotation, or, rather, the selling of cement by your company at prices below your quoted prices?

A. Yes, I remember that.

Q. Well, apart from the information you received from the Abel Construction Company, your contractor-customer in Nebraska, I ask you generally throughout your territory how, under what circumstances have such lower prices come to your attention?

42340 A. We have customers that are very close friends in whom we have implicit confidence, and while we may be fooled occasionally, there are so many of them that we know that the information is not always incorrect.

42341 Q. Well, did your company take any action in connection with the information you received relating to lower prices,—prices lower than published prices, Mr. Brooke?

A. In many cases we did.

By Mr. Seeley:

Q. That is, you did what?

A. We took action by meeting the situation.

Trial Examiner Norwood: You met the lower prices that were reported to you the contract was receiving from a competitor?

Trial Examiner Norwood: I am asking him if he had any experience like that.

Answer the question.

The Witness: I do not know that we had the opportunity to meet an actual price, but we have made prices to meet a situation that might be—the same contractor, but a different job.

42342 Trial Examiner Norwood: In other words, you made it lower than your published price to a contractor because he was holding back on giving you the order, and you suspected that somebody else was underbidding you; is that right?

The Witness: Sometimes we suspected it; sometimes we knew it.

Trial Examiner Norwood: Well, can you give us names of any people involved in things like that?

The Witness: Yes, I think so.

Trial Examiner Norwood: That is, prior to July 2, 1937.

The Witness: C. F. Lyttle Construction Company of Sioux City, Iowa. We sold them approximately 150,000 barrels in 1928, Iowa work in Iowa, I think 15 cents less than published prices.

Trial Examiner Norwood: Go ahead.

By Mr. Seeley:

Q. Other than the N. R. A. Code period, Mr. Brooke, have you sold cement at prices below your published quotations throughout the time you have been with the company?

A. From time to time, yes—not—

Q. Well, between the Code period and July 1, 1937, did you make such sales?

A. Yes, sir.

42345 Q. And did you make such sales between 1928, which you have just referred to, and the N. R. A. Code period?

A. We did.

Q. Referring again to those sales that you have made, Mr. Brooke, to dealers and to contractors at prices below your published prices, I ask you one further question: What percentage of your business sold to those customers has that amounted to?

First, I will ask you what percentage of your sales to contractors, on the average, have you sold at prices below your published prices?

A. Well, that has varied considerably over a period of years. There have been years when nearly all the sales were below published prices. There have been other years when the amount was rather small.

Q. And that includes—your answer includes the period which we are inquiring about prior to July 1, 1937?

A. Yes, sir.

Q. Throughout the period with the exception of the N. R. A.?

A. With the exception of the N. R. A.

Q. You mentioned the Abel Construction Company yesterday. You said that this contractor was a director of your company. Have you ascertained how much cement was used on highway paving work by that contractor in the last 10 years?

A. A little over a million barrels.

42344 *Cross Examination By Mr. Paulson.*

Q. During 1936, what were your sales to contractors, Mr. Brooke?

A. I could not give you a definite figure.

Q. Well, give me an approximation, if you can.

A. Oh, probably—that is direct sales to contractors?

Q. Yes.

A. Well, any figure that I would give you on that would be a guess.

Q. Now, Mr. Brooke, I want to get your best estimate in the same manner as you gave your best estimate of the 10-year period as to what your sales to contractors were for 1936.

42345 A. Well, I gave you percentage over that 10-year period.

Q. Well, I want to get it pinned down a little more definitely, you see: What volume of cement did you sell to contractors in 1936? If you do not remember it in barrels, give me the percentage of your total shipments.

A. It is pretty hard for me to identify any particular year, but generally speaking our sales to contractors—that is, over a period of years—about 25 to 28 percent of the total.

Q. Well, didn't it drop a little lower in 1936 or 1937?

A. It might have; might have gone a little higher.

Q. Do you recall?

A. No.

Q. And what percent of those sales—in other words, of the 25 percent of your sales—which you sell at less than published prices did you sell at less than published prices in 1936 and 1937?

A. Well, if I get your question, there were some sales not made to contractors that were below published prices.

Q. Well, let us talk about contractors, and then we will include the other, too; talk about contractors now, tell me as to contractors.

A. Well, we will put it this way: The sales to contractors, I would estimate that 95 percent of it was on highway work, and that 75 percent of it was at prices less than published prices. Now—

42346 Q. To whom do you sell—

A. I will modify it.

Q. —do you sell at less than published prices—to whom else do you sell at less than published prices?

A. Let me qualify that to this extent, that that condition would vary from year to year. It might be greater, it might be less.

Q. To whom else besides contractors do you sometimes sell at less than published prices?

A. Dealers.

Q. Is that common to sell at less than published prices to a dealer?

A. Well, it depends on the competitive situation. If we find it is being done, in self-defense we go in and take care of ourselves to meet the situations.

Q. Was it done anywhere in your territory in 1936 or 1937?

A. Yes.

Q. In how many places?

A. Oh, in a great many places.

Q. That is, you found dealers able to buy cement at less than published prices?

A. That is correct.

Q. At a great many places. What do you mean by "a great many," eight or ten or twelve?

A. Well, it is usual in markets where there 42347 is considerable consumption.

Q. That is, what markets did you find that in?

A. Well, such as Omaha.

Q. What is that?

A. Omaha, Nebr., Wichita, Kansas.

Q. When did you have—for how long a period have you experienced that kind of competition in Omaha?

A. Well, ever since I have been in business. Omaha has always been a tough market.

Q. Wichita is a tough market, too, isn't it?

A. Yes.

Q. You have some markets that are not so-called tough markets, that are stabilized; isn't that true?

A. Well, they are not as these are.

Q. As to the situation, has the situation been worse since the Code than it was before, or vice versa?

A. Well, I do not know that there has been much difference.

Q. What dealer in Omaha seems to get cut prices?

A. Why, I would say nearly all of them.

Q. And how many are there, there?

A. Possibly twenty-five or thirty.

Q. How much do they get in the way of a cut, do you know? How much do you give them in the way of a cut?

A. Well, that has varied from time to time.

Q. About how much?

42348 A. Ten or fifteen or twenty cents.

Q. Will you name some of those dealers at Omaha, Mr. Brooke?

A. Platner Lumber Company.

Q. The initials, please?

A. I think it goes by the name of Platner.

Sutherland Lumber Company;

Koutsky—Brennan—Vana; Rivett Post & Lumber Company. George A. Hoagland Lumber Company.

Q. Are any or all of those— Are you finished?

A. Oh, if I had time I could remember a lot more.

Q. Are any or all of those dealers engaged in contracting work?

A. Some of them may; they build some houses. I am not sure about that.

Q. Do you have any documentary records to show your sales to those companies?

A. We are not selling those companies. You asked me to name some of the Omaha dealers.

42349 Q. No. Some of the Omaha dealers to whom you have made sales at less than your published prices.

A. Oh, well, that is out.

Q. Name those—you mean you don't want to name those?

A. The ones I named, we do not sell at all.

Q. Well, name those to whom you have sold cement at less than published prices. Tell us the year, if you can, the year when you made the sale?

A. Well, I would rather not do that. It is violating the confidence of our customer.

Q. Do you have any documentary records to show sales at less than published prices to any Omaha dealer?

A. No, sir.

Q. How many dealers in Omaha have you sold cement to at less than your published prices since the Code, since 1936, say; that is, since the beginning of 1936 up to the complaint?

A. Two, I believe.

Q. You do not wish to name those two?

A. I would rather not.

Q. And you have no documentary records to show that the sale was made at less than published prices?

A. Are you talking about—what period now?

Q. From 1936 to July—from January, 1936, to July, 1937.

A. No, I have none with me.

Q. Does your salesmen negotiate the sale?

42350 A. Not always.

Q. Did those two dealers deal directly with the company on such deals?

A. Yes, sir.

Q. You invoice them at the published price?

A. Yes, sir.

Q. How did you effect the giving of the concession?

A. Oh, that is a matter of crediting the account.

Q. In other words, you know of no reported sales to a dealer at less than published prices; no recording of the fact that it was sold at less than published prices?

A. Well, that would depend on what you mean by recorded.

By Mr. Paulson:

Q. Well, on the transaction, on the regular papers that you use in making sales to dealers—

Mr. Seeley: I object, Your Honor. The witness has said that he credited customers' accounts.

Trial Examiner Norwood: Well, didn't you show the reduced price on the invoice?

The Witness: Not always.

By Mr. Paulson:

Q. Have you ever?

A. Yes.

42351 Q. Speaking of sales to dealers.

A. I think we have.

Q. Do you remember the period when you did that, when was it?

A. No, I could not fix the date.

Q. Have you done that in 1936 or 1937?

A. I do not know. I do not recall.

Q. Is the situation the same with regard to the Wichita transaction, that is, as it is the Omaha transaction?

A. All these things that bob up in different ways. They are made—sometimes there is a public letting of a thousand or two barrels in a town like Wichita, or Omaha, and the dealer will bid, oh, anywhere from a fraction of a cent under his cost, under what we consider his cost and published price, to one or two or three cents over it, and if that condition continues we finally come to the conclusion that he is not paying the market, and we have on occasions just gone in and said to another dealer, "Bid this, and so and so, and invoice it at the price that we have given you."

Q. And you have done that since 1935, have you, at times?

A. Yes, we had an occasion like that at Little Rock, Ark.

Q. When?

A. That might have been since the complaint. I will take that back. It is pretty hard to remember back these instances that arise, that are every-day occurrences
42352 —not every day, but frequently—and we try to handle them as they come up.

Q. Well, frequenfly, you say "frequently" and "many." I wonder if you are not inclined to emphasize those a little. Are they not rather sporadic, considering the number of dealers to whom you sell?

A. Well, you never know what the day will bring forth, you know, something bobs up here and there. You get an accumulation of that over a lot of years, and it is rather difficult to recall any particular instance back in 1936 or 1935. I can only say in a general way that there is lots of it and it is fairly continuous.

Q. Well, with a little thinking, you could recall most of the instances in the last three or four years, could you not?

A. No, I could not.

Q. How many dealers do you sell cement to in any day's run of business?

A. I could not answer that. That would vary. We have shipped as high as 62 carloads in one day, and we have had days when we did not ship any.

Q. Well, can you strike any figure that you would want to say was sort of an average, the number of dealers you
42353 sold in any given day?

A. Oh, some days all of our shipments would be to dealers, maybe the next day maybe they would all

be to contractors. That is a difficult thing to average. It is very spasmodic.

By Mr. Paulson:

Q. I am trying to find out how your mind regards the word "many" and "lots," and so on, don't you see. I want to know in any given day how many dealers you sell, and then I am going to ask you how many of those you sold at less than your published prices. Now, can you answer and give us some—well, can you answer? Can you give us some percentage figures there on that question?

A. The percentage of dealers that we sell less than published prices?

Q. Yes.

A. No, I could not. That would vary over a long period. It might be—well, I just would not want to guess at that.

Q. Well, do you think—how many dealers do you 42354 have, Mr. Brooke? You see, we are speaking always of the period before this complaint, and I wish you would keep that in mind. How many dealers—

A. We sell about 400.

Q. And in 1936 and 1937 about how many of that 400 did you make sales to at less than your published prices?

A. Are you speaking of the number of dealers or the tonnage involved?

Q. No, the number of dealers.

A. Well, the number would be—the percentage would be low as compared to the total, but the percentage of shipments would be out of proportion to the—

Q. The number of dealers, if you can.

A. For any year prior to 1937, or the average?

Q. No, the number of dealers that you have sold to at less that published prices, in 1936 and 1937.

A. Oh, 1936 and 1937. Well, there again there is a question that is difficult to answer because we might be giving it to him in March and we did not in April, and vice versa.

Q. Yes, I could see that, but at any one time, any one period, say.

A. I remember one year in Omaha, I think it was 1932, we gave the Platner Lumber Company 10 cents a barrel throughout the entire year.

Q. In 1936 and 1937, did you sell any more than
42355 10 of your dealers cement at less than published prices?

A. Yes, I would say so.

Q. Fifteen?

A. Now, you are trying to pin me down to a percentage, but I cannot conscientiously give you that.

Q. Well, is that somewhere near it?

A. It just is not in the books. We might compile that for you with the permission of the attorney, but I have not it here.

Q. The percentage of contractors who received cement from you at less than published prices is much higher than the percentage of dealers; isn't that true?

A. That is correct; that business is more competitive.

Q. Do you ever sell to a contractor at less than, or at your published price?

A. Oh, yes.

Q. Do you sell to very many of your contractor-customers at your published prices?

A. Do you mean on direct sales?

Q. Yes.

A. Of course, there are two ways of talking about that; in our language, we say we sell contractors for the account of the dealer, or the dealer sells him and we still consider those contractors our customers because they specify our cement when they buy from the dealer.

42356 Q. Well, most of the sales made through dealers to contractors are made at published prices, are they not?

A. Not always.

Q. I say, most of them, from the point of number of transactions?

A. As far as our company is concerned, I would say yes.

Q. How many highway contractors do you deal with in your territory?

A. Well, we try to deal with all of them. We are not always successful.

Q. Well, how many do you deal with, having in mind the period 1936, 1937, as a basis.

A. They are like King Dodo's army. They just keep coming and coming and going.

Q. There never are more than eight or ten in the same territory?

A. We do not have the same crop two years in succession.

Q. There never are more than eight or ten, are there?

Q. In the territory we sold?

Q. In any given time?

A. Let me get your question straight. Now, the number of contractors competing on highway work in the territory we serve?

Q. With whom you do business.

A. I don't know—there would be more than that.

42357 Q. How many more? About how many?

A. I would say 25 or 30.

Q. Is it because contractors are buying for a series of destination points that you sometimes sell to them at less than published prices?

A. Did you say series of destination points?

Q. Yes.

A. No, I do not think that has anything to do with it.

Q. Well, why is it that you sometimes sell to contractors at less than published prices?

A. Well, that is a competitive condition that we find.

Q. I am trying to find out why that competitive condition exists.

A. As to why a competitive condition exists, that is a big order. I could not answer that.

By Mr. Paulson:

Q. Well—

A. I know they do exist.

Trial Examiner Norwood: What is the difference between the competitive condition surrounding the contractor and that surrounding the dealer?

The Witness: Well, I would say this, that the

42358 contractor, where this business is so highly competitive, the contractor is buying cement for a particular job, and when he is through, why, we are through with that obligation; whereas, you sell a dealer at a price less than the published price, you have to continue it or usually lose a customer.

By Mr. Paulson:

Q. Well, why do you give the sporadic—

A. With respect—

Q. Excuse me. You are not finished?

A. Whereas the contractor feels under no obligations

after he gets through with one job, then he goes after the next one, and it is a new deal; it is all done over again.

Trial Examiner Norwood: Does he get that price prior to bidding?

The Witness: Usually; yes.

Trial Examiner Norwood: He usually gets all his business as a result of bidding?

The Witness: Well, yes; on highway work he has to bid for it.

By Mr. Paulson:

Q. Why do you give your sporadic customers a better price than your steady customers?

42359 A. Well, you would have to define the "sporadic customer." I do not understand the term.

By Mr. Paulson:

Q. Well, these contractor-customers, why do you give them, your contractor-customers, a better price than your dealer-customers?

A. It is a competitive situation.

Q. Don't you control your own prices at all?

A. No; I wish we did.

Q. Do you ever give the United States Government a price less than your published price?

A. Yes.

Q. How many occasions can you recall when you have done that?

A. Practically all of them where land-grant rates are involved.

Q. Well, that is a disputed point in this case, but we understand your answer.

From what you said, do you have any instance in mind where you have given the Government a price less

42360 than your published price, leaving out of consideration for the purpose of the question land grant rates?

A. Well, I might cite you Greenville, Miss. That is in the record.

Q. And that embarrassed you, didn't it, Mr. Brooke?

A. Well, I don't know; I was rather pleased, I might have been embarrassed.

Q. Why were you embarrassed about it?

A. I said I might have been. I don't remember that I was.

Q. Well, you said you were. You recall that, don't you?

A. Well, I did not want my competition to feel that I was not embarrassed under the circumstances.

Q. Well, does that mean that you do not like to do things—do not like to follow methods that your competitors do not follow; is that what that means?

A. What is that question again?

Mr. Paulson: Read it.

Trial Examiner Norwood: Read the question.

(Question read.)

A. I still do not understand the question.

Mr. Paulson: Well, read the witness' previous answer, will you, Mr. Reporter.

(Previous answer read.)

By Mr. Paulson:

Q. Now, can you answer the question?

42361 A. Well, I would like to have you re-ask it because it is mixed up.

Q. I say, does that mean that you do not want to use methods different from the methods that they are using,—that was my question.

A. Are you confining this to the Greenville case; is that what you mean?

Q. Well, it springs from that. You said that you did not want—you felt embarrassed because you were out of line, you had used a method which your competitors were not using.

A. No.

Mr. Seeley: I object, Your Honor. It is arguing with the witness.

Trial Examiner Norwood: The objection is sustained. I do not think he said he felt embarrassed.

By Mr. Paulson:

Q. Well, you said you thought you should feel embarrassed, didn't you?

A. No, I did not say that.

Trial Examiner Norwood: Why did you want your competitors to think you were embarrassed?

42362 The Witness: I said I did not want the competitors to think that I was not embarrassed.

Trial Examiner Norwood: Yes. Why was that?

The Witness: Yes. We used a price that was filed with the Trade Practice Committee, and, naturally, there was a little moral obligation there to explain the situation.

By Mr. Paulson:

Q. Well, you said on direct that you—I quote something here in my notes. You said: "Oh, Institute has not taken a hand in competitive matters" in your territory.

A. That is right.

Q. You said that. Well, now, do you recall that the Trade Practice Committee wrote you a letter—

A. Wait a minute.

Q. —regarding a trade matter, do you not, Mr. Brooke? Is that an exception to this statement?

A. Rather than embrace your statement there, I testified, I think, that we had not been influenced in our policies and prices by the Institute in any way; that is about what I said.

42364 Q. I say now, do you testify that the Institute has never taken a hand in competitive matters in your territory?

A. They have not, in so far as we are concerned.

Q. That is, you are familiar with the fact that the Trade Practice Committee wrote you a letter regarding your bid at Vicksburg?

A. Yes.

Q. And you do not consider that taking a hand in competitive matters in your territory?

A. No. I explained my conception of the—what the Trade Practice Committee was trying to do.

Q. And you do not consider that their scope of activities is properly construed as taking a hand in competitive matters in your territory?

42365 A. No. I think they were trying to carry out the wishes of the Administration temporarily.

Q. But they did take a hand and attempt to see to guide the members of the Institute in the conduct of their business, didn't they?

A. Of course, on the same theory that they took a hand with cooperating with the Government in the N. R. A. days.

Q. Well, that may be, but they did attempt to guide and advise the trade on matters, did they not,—speaking of the Trade Practice Committee?

A. Of course, we were free to do as we pleased.

Q. Well, a complaint was filed against you, and you heard about it in September of 1935; isn't that true?

42366 A. Yes, sir.

Q. Mr. Brooke, I understand from your testimony that you travel 11 States, and into some 21 States in order to dispose of about 800,000 barrels of cement annually; is that right?

A. We have 11 salesmen. I had not counted the States, they are enumerated, I believe, in the stipulation; ten or eleven, perhaps.

Q. How about the quantity of cement?

A. Well, of course, we would like to sell about a million and a half.

Q. But you manage to dispose of about how much, on the average?

A. Oh, that has varied from as low as 470,000 barrels up to a million, three hundred thousand.

Q. How about 1937? Do you recall? I guess the exhibit is there and would show you. You may glance at it, if you wish; 1936, say?

A. 1936 was 567,000.

Q. In other words, you traveled 11 salesmen into some 12 States in order to dispose of six hundred—

A. 567.

Q. 567,000 barrels of cement; is that correct?

A. That is for 1936; yes, sir.

Q. If you covered less territory, traveling less sales-

42367 men—in other words, if you dispose of your cement closer to your mill, wouldn't you make more money?

A. Well, we have tried that, and we did not.

Q. You say, in other words, that you make more money following the policy of making sales over a wide area where your expenses are greater; is that true?

A. We attempt to sell as much cement as we can, and in order to get a fairly good volume we have to cover a wide territory.

Q. As I understand it, you make more money by covering a wider territory under heavier selling expense than you do covering a narrower territory?

Mr. Brick: I object to that question, if Your Honor please.

By Mr. Paulson:

Q. Isn't that true?

42368 The Witness: Well, we are conducting our business to the best of our ability and we think that our prospects for profit are better if we cover as wide a territory as we can possibly reach, and with not less than the number of men we have today, the number of salesmen.

42370 Q. Well, trucking tends to give you greater volume near your mill—tended to give you greater volume near your mill, didn't it, Mr. Brooke?

A. No, sir.

Q. You said so in your answer to the questionnaire, didn't you?

A. I do not think so.

Q. You said it might have that tendency, didn't you? Do you recall? Do you recall whether you said that?

A. No, I don't. If I did, I think I was mistaken.

Q. Do you think that trucking of cement might have increased your volume within a short radius of your mill?

A. No, I do not.

Q. You do not think it would; it was not your experience that it did?

42371 A. Would you like for me to tell you why?

Q. No, but I saw an exhibit in the record here, which I think Counsel offered,—he identified it, at least. It seemed to me to show that you had sold a good deal of cement by truck at one time. Is that correct?

A. No. The amount was quite negligible.

Q. It got up as high as 13,000 barrels one year, didn't it?

A. Well, from a percentage standpoint, it was away under one percent.

Q. Most of those—well, most of those sales were made nearby your mill, were they not?

A. That is true.

Q. I show you that answer that I am referring to in the questionnaire, Commission's Exhibit 976-J-R, Clark and Burns asked you how has your market territory been affected by changes in methods of transporting cement since January 1, 1925.

"Answer: Trucking of cement may have increased our volume within a short radius"—

—and "may have" is typed in above the line—

"—trucking of cement may have increased our volume within a short radius."

A. That insertion would indicate that there was a doubt in our mind when I answered it; but on further consideration I would say that it would have a tendency to decrease our business near the mill.

42372 Q. Why?

A. For the simple reason that there is a mill nine miles north of us, and one south of us, and our immediate trucking area consists of Humboldt, Kansas, and one small town east of us, with an annual consumption of not over 3,000 barrels.

Q. How did you answer that same question in
42373 the Clark and Burns questionnaire; do you recall, Mr. Brooke?

A. No, but that—it is in the evidence some place, I think, but I have just answered you now as to why it would not increase our—

Q. Well, your mill is located at Humboldt.

A. Yes, sir.

Q. How close is Humboldt?

A. To where?

Q. To your mill.

A. Oh, the mill is just south of the city limits; probably a quarter of a mile.

Q. What is the next major town?

A. South is Chanute, Kansas.

Q. How far away from the mill is that?

A. Between eight and nine miles.

Q. It is feasible to truck cement eight or nine miles, isn't it?

42374 A. Well, I never considered it feasible to truck cement from a mill for any distance.

By Mr. Paulson:

Q. How far away is the next town?

A. Which direction?

Q. The same direction.

A. Oh, there is a little village possibly about 10 miles south.

Q. Well, tell me this: Do you know how many people live within a radius of 80 miles of your mill?

A. No, I do not.

Q. Do you have any idea?

A. No. I have never—our county has about 20,000 people, I believe; some of the counties adjacent have less, some a few more.

Q. Well, your experience with trucking demonstrated that the demand for delivery to trucks increased year by year, did it not?

A. I am not sure about the—a very small amount, it did not.

Q. What time in 1932 did you discontinue trucking?

A. I do not remember the exact date.

Q. Well, do you recall what month?

A. I am not sure that is the year, even.

42375 Q. Well, did you put a 15-cent service charge for loading trucks on before you discontinued trucking?

A. There was a short period that we tried that out first, I remember. I do not know whether it was still in effect when we discontinued trucking.

Q. What was that, an attempt to discourage trucking?

A. Partially, and partially to offset the additional expense.

Q. Well, it does not cost 15 cents additional, does it, to load a truck?

A. Oh, it may be more than that; I don't know.

Q. It may be less; it may be more?

A. My guess would be that it cost us considerably more than that.

Q. That is, depending on what you took into consideration as cost factors, there, out-of-pocket cost would not be that, would it?

A. Well, that is difficult to figure. It has been our experience that it took just about as long to load a truck as it did a carload, regardless of whether the truck was getting 25 or 30 sacks or 10 sacks.

Q. Well, you would have had to put it on a businesslike basis, this loading of trucks, before you could do it economically; isn't that true?

A. Well, we did not have enough of it to give it 42376 very serious consideration.

Q. It would not be impossible to reduce the cost to a very low figure if you had sufficient volume, would it?

A. Well, we never tried it. I don't know.

Q. Do you remember how you arrived at that 15-cent per barrel charge?

A. It was simply meeting the competitive prices that were being charged; we found that our competitors on the north were making a charge, and it appealed to us as a good thing, so we adopted it. As I say, it offset these additional expenses and inconvenience.

Q. Well, this Clark and Burns questionnaire was answered by you; is that correct?

A. Yes, sir.

Q. It speaks in here of the basing point system, several questions. What do you understand by the basing point system?

42377 A. Well, speaking of the basing point system, I will say it is pretty much of a misnomer. In the first place, there isn't very much system to it; and it is more of a mill net that you have to take into consideration in arriving at what you think might be the lowest delivered price at destination. There might be many of those mill bases. They come and go, and they might attempt to figure prices on a mill this week that we disregard next, depending on how they quote the public, how we determine from information we get as to how they are doing it.

By Mr. Paulson:

Q. Well, then, let us find out how you do price. As I understand it, you have bases—you add the freight from those bases out to the destination point; is that cor-

42378 rect,—that is the basis for determining your destination prices?

A. Sometimes it is. Well, the usual way is, we are traveling all this territory, and if the price at Pittsburg, Kanas, today is $2.48, and we discover tomorrow that somebody is quoting $2.44 or $2.56, we commence to dig around to see what happened.

Q. Well, first let us see. There is some pattern to it, isn't there? That is, at most of the destination points at which you sell you find related back to a base and a freight rate.

A. Generally, I would say yes.

Q. And you watch—you have your salesmen watch for quotations so that you can find changes in base prices; is that so?

A. He is supposed to report to us any information that he receives in the field and, anyway, regarding changes.

Q. Do you ever make a change in the base price, yourself?

A. In our base price? Yes.

Q. Any other besides—yours is a restricted base price, isn't it? It applies to three towns, you said, on direct; isn't that true?

A. Yes, I...

42379 Q. Well, what does it apply to? How many destinations points does it govern, Mr. Brooke?

A. Well, it does not govern any. It would depend on what the other fellow's base was at the time. As of today, I would say—of course, I have been away from home for a week, I do not know what it is today. If the mill north of us was the same as ours it would govern, our price would be lowest at possibly eight points, of which three, I believe, are dealers, but the amount of cement involved—

Q. Let us try and recall 1937 figures. What was your base then?

A. Oh, I don't remember. I believe it was $1.55 stripped, bulk, $1.55 bulk stripped.

Q. What would be the nearest base point to yours, Iola?

A. Iola, Kansas.

Q. What was the base price at Iola when yours was $1.55?

A. I think it was the same.

Q. Well, are you south or north of Iola?

A. South.

Q. How far south? How much is the freight rate between Iola and Humboldt?

A. I think it is about 34 or 36 cents a barrel.

Q. Then, why wouldn't your base control a whole lot of points down south—first, let me ask you, does Iola control some points down south of your mill?

42380 A. Yes.

Q. How far south does the Iola base reach, normally?

A. I do not know whether it controls it.

Q. Is it all the way in Kansas?

A. I would not say they control it.

Q. Well, we won't argue about terminology, but apply, say, then

A. Well, I believe there is a base at Independence.

Q. Where do the lines meet, how far south of your mill?

A. Well, Independence, about 50 miles from our plant. There is just a little territory—

Q. Your mill price should control normally all the way down to where the Independence mill base applies, should it not?

A. Well, there are not many points, see. The railroads run north and south.

Q. You and your competitors do not give your base price full application, do they?

A. I do not know what you mean by that.

By Mr. Paulson:

42381 Q. Adding freight to your base price you would get a lower figure, than you would adding freight to any other base price at more points than your base customarily controls?

A. No. If our maximum mill net and freight rates makes a lower price than any other combination of that sort that we know of, why, our price would prevail.

Q. Well, it is a full-fledged base price, then, is it?

A. As far as we are concerned.

Q. The general rule that you apply in pricing is to quote the lowest combination of base price plus freight?

Mr. Seeley: I object, Your Honor.

The Witness: Not always.

By Mr. Paulson:

Q. Well, is it, except where you find that the destination prices vary from that formula,—that is, your price, is it not?

Trial Examiner Norwood: The objection is overruled.

A. Well, we accept that we find the delivered price at destination regardless of how they arrive at it.

Q. Yes, but it is the rule, isn't it, that the price at destination which you find giving you the benefit of that exception, is the lowest combination of some base plus some freight; isn't that true?

A. I would not say it was the rule.

Q. It happens more times than it does not hap-

42382 pen, doesn't it? In other words, it is true in the majority of cases?

Q. I am talking about published prices.

A. Well, that, too, varies from time to time; sometimes it is lower.

Trial Examiner Norwood: Well, do you think it happens 50 percent of the time?

The Witness: Well, I dislike to get into those percentages because I am not very good at percentage in the first place, and I might overestimate it or underestimate it. I would rather stand on the record rather than guess at it.

Trial Examiner Norwood: Can you give me any idea of the proportion between the two?

The Witness: No, I cannot.

By Mr. Paulson:

Q. Do you know of any point, any destination point in your sales territory—that is, speaking again of 1936 and 1937—that is not the lowest combination of base plus freight?

A. Oh, we haven't—

Q. Published price, I am talking about.

42383 A. Well, of course, when they depart from that so-called system that you refer to, they are not even published.

Q. No, but I am just asking you about the published. We will come to the other later. We already have been to the other to a large extent. I want to know about the published prices.

Now, will you answer the question? Do you know of any published prices that prevailed in 1936 or 1937 in any of your sales territory that were not the lowest combination of base plus freight, rail freight?

A. Of course, I do not always know what prices are published and what are not. So far as our own prices are concerned, I would say that practically all of them a combination of some mill net and freight rate; that it, our own published prices.

Q. Have you ever in your own experience ever published prices which were not the lowest combination of some base plus freight?

A. Yes.

Q. When was that?

A. Oh, several years ago we had one at Oklahoma City that we openly quoted the trade.

Q. But you find it to be the normal condition in your

sales territory that you and your competitors quote at all destinations a figure which is the lowest combination of some base plus freight; isn't that true?

A. They may quote on that basis but they do
42384 not always sell on that.

Q. Yes. You insist that they do not always sell. I am trying to find out what you publish now, and you insist on telling us about deflections.

Well, does that method of quoting—well, never mind.

Do you check with the Institute freight rate books just to keep your prices in line?

A. No, sir.

Q. Do you check with the Institute freight rate books at all?

A. We use the Institute freight rates, yes.

Q. Well, is to help you to meet competition, to help you, in other words, to know what competitors are quoting, or for what purpose?

A. No. It is for the purpose of knowing the freight rates from all producing points.

Q. Well, that is an intermediary bit of knowledge. What is your ultimate purpose with that service?

A. Well, it is just a part of the information that you have to have in the conduct of your business.

Q. You do not use it for shipping purposes, you have already told us that.

A. Well, you mean routing and things like that?

Q. Well, you have been telling us all through the direct, as I understand it, that you ascertain your
42385 freight rates that you use in shipping from tariffs; am I right?

A. Well, we might take the rate from the book, but if we want to confirm the route, we would consult the tariffs, if there is any doubt in our mind about it.

By Mr. Paulson:

Q. Well, you get your rate and route out of the official tariff.

A. Well, we look at the route; we probably look at the rate, too.

Q. I understood you to say you got the rates from the official tariffs?

A. That is, rates from our plant?

Q. Yes; that you use for shipping purposes. Now, then, I am trying to find out what use you make of the

Institute freight rate books, so I ask you, don't they serve only to enable you to know what your competitors are quoting?

A. No. They simply give us the rates from all producing points, including our own.

Q. Is it useful in the conduct of your business to know the rates from various producing points other than your own to these various destination points?

A. Well, we have to meet our competition.

Q. Well, that is what I said.

42386 Mr. Brick: We conceded that; Your Honor please, time and time again.

Trial Examiner Norwood: Let us hear what the witness has to say.

By Mr. Paulson:

Q. You want to know what your competitors are going to quote, or quote—that is why you use The Cement Institute freight rate books, isn't it?

A. First, we want to know where our competitors are. We might forget there is a mill at Marquette.

Q. All right: You learn where they are and what they are going to quote?

A. No, we do not always.

Q. Well, you learn what prices they are going to publish, don't you?

A. No.

Q. You know from reading the Institute books, using them, what prices your competitors are making?

A. We learn what prices they have quoted, but of course we never know what they are going to quote.

Q. But you know what their published prices are at every point by looking at that freight rate book, don't you? All the published prices—have you ever in all your experience found any published price that you could not trace back by using the Institute freight rate books?

42387 A. Yes.

Q. Outside of instances that you, yourself—you said you published a price one time which was the lowest combination of base plus freight?

A. Oh, we have had lots of them.

42388 Q. Now, do I understand you to say, Mr. Brooke—I am speaking now of 1936 and 1937, understand—that in that period of time you now have knowledge of

published prices in your sales territory that were less than the combination, the lowest combination, of some base plus rail freight?

A. Well, we find what prices—

Q. Now, I asked you, do you now have knowledge—have in mind, in other words, any instance where in 1936 and 1937, as the period where, or of a published price at any destination point in your territory which was not the lowest combination of some base plus freight?

A. Yes, I think we have had that condition.

Q. You have knowledge of some instances, do you? Wht do you have in mind?

A. Well, I have in mind—I do not know how definite I can be about it—but from the Bonner Springs plant, their quotations did not relate to the base freight rate.

Q. Quotations in what territory?

A. In Kansas.

Q. What year was that?

A. Oh, it was during the juggling of the emer-
42389 gency freight rates. I do not remember the exact year.

Q. Was it 1936 or 1937?

A. It might have been 1936; it might have been prior to that.

Q. Their quotations were the equivalent of some emergency charge in freight rates that was prevalent at that time; isn't that so?

A. It did not check with the other mill base prices in other States.

Q. Yes; it was the difference,—in other words, the discrepancy equal to some freight rate change?

A. It was a variation such as you referred to.

Q. Well, but it was the discrepancy between the published prices and the lowest combination; was it equal to some emergency freight rate change?

A. Well, it was either that or else you would interpret it as their having a different mill net for Kansas than they did for the other State.

Q. Now, do you know of any other instance?

A. Oh, I do not try to remember all those things. I am interested in what is going on today, the current situation. I do not tax my memory with all those details of the past.

Q. We are trying to find out how you and your competitors price your product out there where you sell ce-

ment, so I ask your some questions which give you a chance to tell us.

A. I will do my best to answer them, but—

42390 Q. Now, then, I asked you originally: Do you check with the Institute freight rate books just to keep your prices in line? What do you think of that? What do you say to that question now?

A. I would say no.

Q. Well, what else do you check with them for?

A. We want the rate information from all producing points with whom we compete.

Q. What for?

A. So we will have some idea of what our competition is.

Q. So that you can keep your prices in line, isn't that right?

A. No, no.

Q. Well, for what? Do you ever quote the low,—knowing that your competitor is quoting $2.60, do you ever quote $2.55, or less than he is quoting?

A. Oh, we do not quote any lower than we think we have to.

By Mr. Paulson:

Q. Well, then, you attempt to keep your prices in line with your competitors, don't you?

A. No. I don't like that word "line."

42391 Q. Well, do you sell your cement for less than they do?

A. Sometimes.

Q. Is your cement an inferior product to theirs?

A. I never have admitted it.

Q. Why do you sell it for less than what they sell it for, then?

A. I might have misjudged the market.

Q. But if you know what the market is, and you can ascertain the market by looking at bases and freight rates, you will make your price the same as theirs, won't you?

A. I would try to get more for it if I thought I could.

Q. But you cannot, can you?

A. I have not been very successful at it.

Q. You have sometimes?

A. I believe some isolated case I might have had an order for less than the other fellow.

Q. Now, then, it comes back to this, that you check with the Institute freight rate books just to keep your prices in line?

A. No, I would say in order to help us in our competition with other producers.

Q. Well, we are pretty close now. I do not want to attempt to make you adopt my language. You do not check with them principally to get freight rate information to use in shipping your product, do you?

42392 A. Well, indirectly, it amounts to that. You are not going to ship it if you do not get the order, and you are not going to get the order unless you successfully compete with other producers, and—

Q. In that way you get back—in that way, and in that way only, do you use it for freight rate information; isn't that true,—or for shipping information; isn't that true?

A. I don't know. I don't know whether I understand you.

Trial Examiner Norwood: Is that true?

The Witness: Well, we must know what our competition is, and part of that competition is the freight from other producing points. I would not know any other way to conduct our business.

42393 By Mr. Paulson:

Q. On direct examination, Mr. Brooke, you said something like this: "If we found the Institute rate different from the tariff, we would give the tariff rate preference." Do you recall that testimony?

A. Yes.

Q. Does that mean that you would compute each rate—does that mean that you compute each rate you use? I think you said before lunch that you did compute each rate.

A. Compute each rate?

Q. Ascertain it from the tariff.

A. Well—if I understand what you mean, we would use the tariff rate if it was different from the Institute book.

Q. Does that mean that you check all of the rates you use for shipping purposes with the rates in the Institute book?

A. No, I don't believe we do.

Q. Well, how do you happen to find discrepancies
42394 between freight rates which you ascertain in your shipping department and those which appear in the Institute freight rate book?

A. Well, our traffic man, or the man that is used to using the freight rates, would notice any wide discrepancy. For instance, our rate to Muskogee, Okla., we will say might be, for example, 15 cents a hundred, and if he would happen to spot a town in the book seven or eight miles from there with a 25-cent rate, his attention would be attracted to it, and he would look up the tariff and find that it was wrong.

Q. Would he then call it to the attention of the Institute?

A. Those are his instructions.

Q. How do you weigh bulk cement for shipment, Mr. Brooke?

A. Well, we equip the cars with bulkheads, or—yes, with bulkheads, and make minor repairs necessary to put them in first class shape for bulk loading, and we weigh that car empty, as equipped for bulk loading, and when it is loaded we weigh the gross load.

Q. When you tender cement in bulk to the railroads, do you have any details of shipping that you do not have when you tender it in bags?

A. Well, I do not know that we do. We have, of course—the bill of lading will show it in bulk, and give the gross, tare, and net weights; whereas, when we ship in sacks we ship under Western Weighing Association agreement. Shipments made in sacks are not weighed by us or the railroads.

42395 Q. And does that difference reflect itself in the freight bills in any way? Do you have more difficulties, in other words, when you ship in bulk; more difficulties regarding the right rate, and so on?

A. The right freight rate?

Q. Yes.

A. No, I don't think so.

Q. Well, can you think any details of shipping that you would have when shipping in bulk that you would not have when shipping in bags?

A. Well, when we ship in bulk, of course, it is much easier and quicker to load, particularly if you load in maximum cars, and we have no freight to pay on cloth bags returned. We probably have less claims for loss and damage. That is all I could think of.

Q. The freight rate is the same, whether it is bulk or bags, I presume?

A. That is true.

Q. In other words, so far as you know there is no practical difference whether you ship in bulk or whether you ship in bags from the details of a shipping standpoint?

A. Well, it is less expensive.

Q. Bills of lading are the same?

A. Similar, yes.

Q. The details of the bills of lading, is there any
42396 difference in those?

A. Well, the weight is figured at 376 pounds instead of 380 per barrel.

Q. When you ship in bulk you figure it 376 pounds to the barrel?

A. Yes.

Q. You do not show the number of bags on a bill of lading, or do you?

A. When shipped in bulk?

Q. No, when you ship in bags, do you show the number of bags on a bill of lading?

A. I believe we do. I think we show the number of barrels and bags. I would have to refer to one of them to be sure of it.

Q. When you ship in bulk you do not show the number of barrels; you merely show the hundredweight; is that correct?

A. No, we show the number of barrels.

Q. Why do you show the number of barrels when you are shipping by the hundredweight?

A. Well, that is the unit that is used in all commercial transactions in the sale of cement.

Q. Well, the railroad does not care anything about barrels; it is interested in the hundredweight, isn't it?

A. Well, but all our statistics are based on the barrels,—our prices.

42397 Q. Well, you show it on your invoice, perhaps, the number of barrels when you are shipping in bulk, but would you show it on the bill of lading?

A. Yes, we write our invoice and bill of lading with one writing. We have a system of short carbons.

Q. Well, the total freight rate on 50 barrels shipped in bulk is different from the total freight rate on 50 barrels shipped in bags?

A. It would be less.

Q. Well, you use the same freight rate when you calculate your destination price, don't you?

A. Well, we might; we might not.

Q. You use the 380—you give them in quoting your destination prices, you quote a rail rate multiplied by 3.8, don't you?

A. We sell it at the desination price that we find.

42398 By Mr. Paulson:

Q. Well, we are both of us well enough acquainted now with the general facts in this case not to have to spin out what a destination price is here again, surely. Destination price, generally speaking, is some base plus rail freight, isn't it? We went over that ground. I will ask you again, however, your published price is, isn't it?

A. Not always, no.

Q. But generally speaking it is?

A. Yes, I would concede that.

Q. And the rail, in order to arrive at that price; that destination price, you multiply the rail rate per hundred by 3.8, as is shown by Commission's Exhibit 3256?

A. We would if we were figuring the price in cloth.

Q. Well, you do not publish one price in bulk and another in cloth, based on the difference in freight, do you?

A. No, the freght rate would be—

Q. The freight rate would be the same in your quotation, wouldn't it?

A. It might not be any freight involved in the quotation. It might be simply a price that we found at this destination, and if we would have—we will say the price was in cloth—if the shipment was desired in bulk we just simply deduct the differential we found the competitors offering at that time.

Q. Well, give me a destination to which you fre-
42399 quently ship cement, Mr. Brooke, some small place not too far away from your mill.

A. Well, we might take Ottawa, Kansas.

Q. Are you selling to dealers there at your published prices, or on what base—what base is applicable to Ottawa?

A. I do not know.

By Mr. Paulson:

Q. Do you know any town where some base is applicable?

A. Humboldt, Kansas.

Q. Do you have a freight rate from your mill to Humboldt?

A. To Humboldt?

Q. Yes.

A. Switching rate.

Q. Can't you think of any other destination point where a base is applicable?

A. That is as of today, or since January 1st, or prior to July 1st?

Q. Well, for an illustration I think it is permissible to use some present figure.

A. Well, we would estimate, say we take Coffeyville, Kansas.

Q. Coffeyville, what base is applicable there?

A. Well, I would refer to the rates from various producing points.

42400 Q. Well, do you know which one is applicable there?

A. It might be Independence, Kansas, or it might be—

Q. You don't know?

A. —Humboldt.

Mr. Seeley: Excuse me. Could the witness be permitted to finish his answer?

Trial Examiner Norwood: Finish your answer.

A. It might be Independence, Kansas; it might be Humboldt. I would not know without checking; or it might not relate to either of those. We might find a price there that was haywire in so far as those mill bases are concerned.

By Mr. Paulson:

Q. Do you know any destination point to which the Iola base is applicable at the present time?

A. No, I would not know that.

Q. Do you know any to which the Independence base is applicable at the present time?

A. No, I would not know that.

Q. Do you know any base which your base is applicable to that takes more than a switching rate; in other words, takes the regular rail rate?

A. I would if I was at home and on the job. Of course, I do not know what has happened since I left, and I do not know what the prices are that, as you say, might be based on those other mills. I could estimate it and I, of

42401 course—if I were seeking some business, I would find out sooner or later whether my estimate was

high or low, but so far as actually knowing what that price is, I do not know.

Q. Well, you net more when you sell in bulk than when you sell in bags, don't you?

A. No, I would not say so.

Q. Well, why don't you if the—

A. In the first place, we sell bulk cement at 45 cents a barrel less than we sell it in cloth sacks, ordinarily.

Q. That is all taken care of by the bag charge; that difference is the bag, isn't it?

A. Well, if we were shipping cloth we would estimate 10 cents each, or 40 cents per barrel for the cloth sacks returned.

Q. Your destination prices are built up on a 380-pound weight per barrel, aren't they?

A. I do not think the weight has anything to do with the destination price. Three hundred and eighty pounds is a standard specification in weight for a barrel of cement in cloth. In bulk it is 376, but there is no relation, so far as I can see, between the weight and the price.

Q. Does a cloth sack weigh four pounds, or not?

A. Oh, it depends on how often—

Q. Four of them would weigh four pounds?

A. —how often it has been used and how much cement there is in the fabric, and they would vary. I
42402 would say from a half pound to possibly a pound and a quarter a piece.

Q. Did you use the control clause in an effort to be competitive?

A. We first used the control clause during the N. R. A. period on account of the convenience and giving the Government the benefit of the land-grant rates without the necessity and delay of waiting five days after filing the price f. o. b. our mill, it being necessary to have the price on file.

Trial Examiner Norwood: A little louder.

A. It being necessary to have the price on file five days, or else use the price on file.

Q. Well, after the Executive Order which has been talked of in this case was issued, you could carry 15 percent, couldn't you?

A. Yes, but you would still have to have a filed price.

Q. Don't most invitations to bid from the Government reach you more than five days before the bids are opened?

A. Well, I don't know. Some of them may. I would not be sure about that.

Q. Well, some of them did, didn't they?

A. Some of them I know are received too late to get the bid to the officer in time, and in some instances we have wired our quotation telling them that the quotation was being mailed that day.

Q. Well, if you could wire your bid, why couldn't
42403 you wire a price when price filing was in effect?

A. Well, we did wire a price in those cases where we wired a bid.

Q. You say you used the control clause so as not to file prices because you did not have time to file prices, as I understood it.

A. Well, I said it was a convenient method and relieved us of that necessity, and there were times when there was not time to file it.

Q. You do not consider that you bid f. o. b. mill price when you use the control clause?

A. We felt that we were giving the Government the benefit of the land-grant rates which we understood to be their reason for asking for f. o. b. mill prices.

Q. And you did not think you were bound to file that price which you bid,—that control clause price that you bid?

A. Not if somebody else had filed it.

Q. You thought that was taken care of with your destination price filing; is that so?

A. If we could use the lowest price, destination cost price that had been filed—but I did not find anyone else filing a mill price for Humboldt, Kansas—so in order to use that we would have had to file it ourselves, and then wait five days before we could use it.

Q. Rather than file you used the control clause; is that it?

42404 A. Yes. That seemed to be the convenient and easiest way to handle it.

(The foregoing testimony beginning "Did you use the control clause" was adopted by Oregon, Utah and Georgia.)

Q. Now, in the period when price filing did not obtain —that is, after the Code—you still used the control clause, didn't you?

A. Yes, sir.

Q. Then why did you use it then?

A. Well, it still was a convenient method of giving a quotation to the Government; giving them the benefit of the land-grant rates, including the officer in charge, the information as to the cost at destination without the necessity of him—

Q. Without the necessity of bidding f. o. b. mill; is that it?

A. Without the necessity of him going to all this trouble figuring it.

Q. Couldn't you just as well given him the land-grant rate or given him the freight rate, or calculated it to him and send that to him on a separate sheet of paper, calculate his destination price and send it to him on a different sheet of paper? What difference would it make?

42405 A. Well, if you knew these army officers like I do, you would not ask that question.

By Mr. Paulson:

Q. Well, they want to know the destination cost, as I understand it.

A. With the least amount of effort on their part to arrive at it.

Q. It would be very little effort if you sent a calculation showing the destination cost after you bid f. o. b. mill, wouldn't it?

A. Well, he would have to make those same calculations from all the producing points that were bid. He would have quite a—

Q. Why would he? You would give him the calculated figure; you would say "I bid $1.60 f. o. b. mill; that will amount to $2.10 at the destination," and if everybody did that it would be simple.

A. That is virtually what we did. We told him what the destination cost was, and all he had to do was to deduct the land-grant rate to have the mill price.

(The foregoing testimony beginning "Now in the period when price" was adopted by Georgia.)

Q. The virtue of your method was that you were able to make prices identical with those of the competitor?

A. No.

42406 Q. Is that right?

A. That has not proven to be the case.

Q. That is why you used it?

A. Some of them were—

Q. That was why you used the control clause, wasn't it?

A. No.

Q. It was in an effort to make identical prices?

A. It was in our effort to meet the lowest calculated price at destination.

Q. Well, it was in an effort to—

A. Sometimes we succeeded, sometimes we did not.

Q. It was in an effort to get the lowest—to be as low as the lowest man, wasn't it?

A. Yes, we tried to be.

Q. And you knew at the time you were doing it that you were using it, that your competitors were using the same method, didn't you?

A. We did not.

Q. Well, you did not know—I thought you said you got your control clause from your competitors.

A. We got the control clause from the N. R. A.

Q. Well, they were all members of the N. R. A.; weren't they,—The Cement Institute?

A. Well, are you talking about the Code period now?

Q. Let me get it clear: Did you or did you not
42407 know at the time that you were using the control clause that your competitors were also using the control clause?

A. I knew they had used it, yes.

Q. You knew that they used it, you used it, and you would all get identical prices; isn't that true?

A. Well, during the N. R. A. they were very apt to be identical because you would naturally use the lowest destination cost on file with the N. R. A.

Q. And that is why you used the control clause, isn't it?

A. No, sir.

Q. Well, you would not want to go in high, would you?

A. No, and I would not want to be too low.

Q. So you would want to be identical, wouldn't you?

A. I used the control clause to relieve us of the necessity of filing these mill bids.

Q. If each of you bid f. o. b. mill bids, and had not gotten together to know what bid you were going to make, you would all have different prices, wouldn't you?

Mr. Seeley: I object, Your Honor—

A. I do not know—

Mr. Seeley: There is no evidence that this Respondent did get together with anybody.

Trial Examiner Norwood: Overruled.

By Mr. Paulson:

Q. You do not know, you say, but if you used the
42408 same method of pricing and all used the same control clause, you would all get identical prices; didn't you know that?

A. No.

(The foregoing testimony beginning "The virtue of your method was that you" was adopted by Oregon, Utah and Georgia.)

Mr. Brick: If Your Honor please, I do not think the witness had a full opportunity to answer the last preceding question. May it be restated to him and see if his answer is in the record?

Trial Examiner Norwood: I thought that he did, but if Counsel thinks otherwise, Counsel may go into it on redirect.

Mr. Seeley: I objected to the question, Your Honor.

Mr. Brick: We cannot keep track of all these, if Your Honor please.

Trial Examiner Norwood: That is what Counsel is there for.

Mr. Brick: May I move, Your Honor, to have the next-to-the-last question read to the witness, and I request Your Honor to ask the witness if his answer is in the record.

Trial Examiner Norwood: The motion is denied.

Proceed with the cross-examination.

By Mr. Paulson:

Q. Mr. Brooke, I show you Commission's Exhibit 279-A, and ask you if you recognize that document.

A. Yes, I recognize it.

42409 Q. It is a photostatic copy of a letter you wrote, is it?

A. That is right.

Q. Did you take time to read it? If not, will you do so, familiarize yourself with it?

A. Yes, I read it.

Q. It says, in one sentence in here,—says on the face

of it—it looks like—allow me to read the two sentences that appear.

Mr. Seeley: Isn't this an exhibit in evidence?

Mr. Paulson: It is just two sentences, for the benefit of His Honor.

By Mr. Paulson:

Q. "Isn't the practice of bidding at the mill contrary to customary trade practices. On the face of it it looks like an excellent way to eliminate competition." That is Mr. Brooke's letter to Mr. C. H. Reiter, of The Cement Institute.

Mr. Brick: Is this on the record?

Q. Will you explain why you believe that bidding at the mill would eliminate competition?

A. Well, if I remember correctly, that referred to some Bureau of Reclamation invitations from the Denver office in which they did not give the destination, and without those destinations mills as far removed as we were naturally would not attempt to bid any mill price; so my thought was that the Government was not getting all the
42410 competitive bids that they otherwise would have if those mill prices had not been filed.

Q. F. o. b. mill bidding, you think, eliminates a number of bidders?

A. Yes, I thought that was detrimental to the Government's interests.

Q. What is that?

A. I think that is detrimental to the Government's interests.

Q. And do you think, as I understand it, that bidding destination prices is competitive?

A. If we know the destination we are in better position to estimate what our competition is likely to be, and I firmly believe that our bid would be lower than—that is, the cost to the Government would be lower than if we stuck to a strictly f. o. b. mill price.

Q. Why do you think that there would be less bidders if you bid f. o. b. mill?

A. As I said, not knowing the destination, we would not know how to estimate the competition that they would have to meet at destination, not knowing the destination.

Q. Is that the only basis you can think of for pricing cement, is knowing what the competition is?

A. Well, we have to have, to be able to guess at it or estimate it.

Q. If you can make cement at $1.20, you could afford to sell it at $1.40, and you could afford to bid any-
42411 where in the country $1.40 f. o. b. mill, couldn't you?

A. Well, of course, if I had my way about it I would want about $2 a barrel.

By Mr. Paulson:

Q. Well, you do average about $1.40, though, don't you?

A. We try to get what we can for it.

Q. You average about $1.40?

42412 Q. What is your answer?

A. I do not recall. You are talking about 1937, and prior to that?

Q. Yes.

A. The average net varies over different years. I just do not recall any of those figures at this time.

Q. Isn't that about right, 1937, $1.40?

A. I do not remember.

Q. Well, supposing it was, you could afford to bid $1.40 anywhere in the United States f.o.b. mill?

Mr. Seeley: I object, Your Honor.

Q. Could you? You could?

Trial Examiner Norwood: Overruled.

Q. Isn't that true, anywheres, if you can afford
42413 to bid $1.40, or accept $1.40 from one customer, you can afford to accept it from another?

A. Oh, I don't know what we could afford to do. We, as I say, try to sell our product at as good price as we can get.

By Mr. Paulson:

Q. Well, the fact of the matter is that if you bid f.o.b. mill, and the competitors bid f.o.b. mill there would be more bids submitted rather than fewer submitted; isn't that true?

A. I do not think so. You mean for the same project?

Q. Yes.

A. No.

Q. Well, you bid down in Mississippi, Vicksburg, we have seen by the record.

A. That is right.

Q. Commission's Exhibit 1063 shows that an invitation was mailed to you for cement to be used at Rolling Fork, Miss. Do you recall having received that?

A. I testified yesterday that we had no recollection of receiving that invitation, and it is not in our file, and it is our custom to keep the invitations even though we do not bid on them; and it appears that we were on the mail-
42414 ing list, but I have never seen the invitation.

Q. You do not recall having rejected it or considered it or bid on it?

A. No, sir.

Q. What steps have you taken since 1930 to arrive at a satisfactory dealer policy?

A. Dealer policy?

Q. Yes.

A. We have always had a dealer policy. It has been flexible and changed from time to time.

Q. Do you belong to any dealers' associations?

A. No, sir.

Q. Have you ever belonged to any dealers' associations?

A. No, sir.

Q. Do you sell part of your cement direct and part through dealers?

A. That is correct.

Q. Do you publish announcements showing your division there?

A. We have published announcements.

Q. When is the last time you published it?

A. Oh, I don't recall the dates, but we have such announcements in the past.

Q. Do you recall the announcements of your competitors in 1935 regarding dealer policies?

A. I remember an announcement that was put
42415 out, oh, some time after the discontinuance of the N.R.A.; I guess that was 1935.

Q. Did you send out a similar announcement?

A. I think we did.

Q. An identical one with the one that you found in the field?

A. It is my recollection that there was some demand on the part of our dealer-customers to announce our policy inasmuch as several of our competitors had sent out printed announcements, and we felt that we were forced to meet

that situation. While it was not so very different from the practice that we are following, we did it to appease the dealers who were asking us to.

Q. In other words, you sent out an identical announcement or an identical policy to those you found?

A. It was similar. I am not sure it was identical.

Q. Did you read the Compendium Mr. Seeley asked you about with a view to determining whether the practices described in it conformed to your own?

A. I have read it. It has been a long time. I could not tell you what is in it, but I am sure I have read it.

Q. Did the practices that are described in it conform to those that you were using at that time?

A. Well, I think, generally speaking, they did. Of course, there were exceptions, and things come up that required individual treatment or decision at the time.

42416 Q. Did you make any change in your policy, modification of any one of your policies after reading that Compendium?

A. No, sir.

Q. Do you sometimes make a written contract and sometimes an oral one under the same circumstances?

A. Well, we—I do not know whether you would consider it the same circumstances. Do you mean the same kind of a job?

Q. That is right.

A. Well, we have—I suppose you would call it contract, or just promise of a contract, or promise of shipment.

Q. Do you strive to get all of your commitments in writing; is that what you strive to do?

A. Well, we would rather have them that way, but then if the contractor prefers not to obligate himself, why, we do not insist on it.

Q. Is there any real difference between the written commitment and the oral commitment?

A. Not so far as we are concerned.

Q. In other words, there is no difference between a specific job contract and any one of your oral commitments?

A. We would feel just as obligated on an oral contract as on a written one.

Q. A specific job contract—the specific job contract that you use, was it prepared by your company?

A. No, the one we are using—well, we had it printed, yes.

Q. I mean, did you draft it? Did your company draft it?

42417 A. We adopted the one specified in the Code, in the N.R.A. and we are still using it.

Q. Prior to N.R.A.

Q. What kind of a specific job contract did you use?

A. We had one that was quite similar. The N.R.A., however, made a few changes, and in order to strictly comply with the law we reprinted it and put the Blue Eagle on, and the Eagle is still on there. When we use one of them we just scratch him off.

Q. Do you know the origin of the one that you used before the N.R.A. ones?

A. Oh, it came about in the process of evolution in the cement business, I guess. It was built up over a number of years. It was our practice when we had our contract reprinted we would read them over carefully and decide whether or not there was something that we should have in there, something to eliminate, something to change.

Q. Well, your sales contract, do you use a sales contract?

A. Well, that is what I thought you were talking about. That was the specific job contract.

Q. Well, I thought you had two forms in use, one a specific job contract and one a sales contract.

A. Well, we use a specific sales orders, I believe you call them.

42418 Q. Yes. Can you explain when you use a specific sales order?

A. I think that was another N.R.A. concoction, too.

Q. You do not use them now?

A. Occasionally, yes.

Q. Well, what peculiar circumstances warrant the use of a specific sales order? I do not understand that.

A. Well, it depends a whole lot on the particular salesman that writes up the contract in the field. I never did seem to get them all thinking alike. One salesman will use the specific job contract, and the next one will come in on the other; either one serves the purpose. The contract is

not very binding. If they do not take the cement, we have never forced them to.

Q. It is just a little easier to persuade a dealer that he is obligated to take some cement if he signed his name to a contract that if he pledged himself orally; isn't that the difference?

A. Yes. We would like to have him sign an order, although most of our dealers, if they say the business is ours, that is sufficient. We have confidence in them.

Q. During the time that the Institute engaged in contract checking, you had a majority of your sales under oral commitment also, didn't you?

A. I do not know that we had the majority. We
42419 had some of them. There was an advantage there sometimes in not having it under contract.

Q. Why?

A. Well, it did not show up; therefore, nobody was checking it.

Q. Well, the advantage there was that you could sneak a little cement into the market beneath the recognized prices; isn't that true?

A. Well, there were several angles to it.

Q. Well, that was one angle, wasn't it?

The Witness: Would your mind repeating that? I did not quite get it.

Q. I said, when you did not have to disclose your commitment you could continue to ship to any one of them after a price rise; that is the effect of what I said; isn't that true?

42420 A. Oh, you could ship it whether it was listed or not. I do not think that made any particular difference. There was nothing compulsory about it.

By Mr. Paulson:

Q. Oh, no; but it would be embarrassing, wouldn't it, to ship cement at less than published prices if your competitors knew of it?

A. No, we are not that easily embarrassed.

Q. You were that—you became embarrassed because of similar circumstances when you sold cement down in Vicksburg, weren't you?

A. I testified that I did not want the competition to think that I was not embarrassed.

42421 Q. What do you understand by the term "freight absorption," Mr. Brooke?

A. I do not know as I understand it, unless it is shrinking, a shrinkage of your mill net due to have a higher rate than some of your competition.

42422 Q. Well, you recall in that correspondence, Commission's Exhibit 174-F, that is where regarding your bid to Vicksburg Mr. Neylan suggested that your freight absorption must have been extraordinary. Do you recall that?

A. No, I do not recall that. What Mr. Neylan said, that would be immaterial.

Q. What was your freight absorption on that,—do you recollect?

A. I do not remember.

Q. Do you recall how you arrived at the 2.161177 figure that you bid in that instance?

A. Greenville?

Q. Yes.

A. Vicksburg?

Q. Yes.

A. Yes. That was a price that we secured from the Trade Practice Committee; some competitor had filed that destination cost price. We bid it, though, as a destination, as a delivered price.

Q. What was the freight rate between—.

A. It moved on a commercial rate.

Q. If the statistics of the Institute showed you were losing ground from the point of volume of sales, would you blame part of that on the location of base points and the level of applicable base-point prices?

42424 A. Well, that does not mean much to me. I am afraid I cannot answer you there. I do not think I would blame anything in particular. I would commence to look around to see where we were weak.

Trial Examiner Norwood: What would you consider it would be due to?

The Witness: Oh, it might be due to most anything, Judge. There are lots of things that could cause us to lose ground. It might be our own lack of effort.

By Mr. Paulson:

Q. Suppose you were putting forth your full effort and still losing ground, then what would you blame it on?

A. It might be poor cement. There are just a thousand things it could be.

Q. I am only asking, does it enter your mind that the base points are not properly located and that the level of the base prices which affect your territory was not proper; does that enter into your considerations?

A. Well, may I ask what your mean by proper
42425 location of base point? I do not get that.

Q. Well, you had a quarrel, didn't you, with Mr. Boettcher, about base point,—about a base point?

A. No, we had no quarrel.

Q. Well, you were there when Mr. Wulf was with your company, weren't you?

A. Yes.

Q. Didn't he quarrel with Mr. Boettcher—I characterize it as a quarrel. He had quite a bit of correspondence with Mr. Boettcher about the installation of a base point, didn't he?

A. No. He just instructed me to base our bids on so much Superior, by reason of the fact that we were finding prices in the field that seemed to reflect that that was what they wanted for their cement, what they were getting.

Q. In other words, if somebody put a base on your mill it would affect your price, wouldn't it?

Mr. Seeley: I object, Your Honor.

Q. If the base price at Iola goes down 10 cents, you are affected by it, aren't you?

Trial Examiner Norwood: The objection is overruled.

A. Well, I don't know. We might be, yes.

Q. Well, you are; there is no doubt about that, surely.

A. You might increase your volume to overcome it. We might make more money; I don't know.

Q. I said, you are affected by it. I did not say which way.

42426 A. Affected. Oh, everything affects you.

Q. Now, if that base were eliminated entirely, that would be of some help to you, wouldn't it?

Mr. Seeley: What base is Counsel inquiring of now, Your Honor?

Mr. Paulson: Iola.

Mr. Brick: May I inquire whether the discussion now with reference to the causes for falling off in tonnage as reflected by Institute statistics are the reasons for losing money, which has prevailed in the industry for so long?

Mr. Paulson: I want to find out whether this witness in

considering the Institute statistics has brought to his mind the location of bases and the level of prices at the bases; that is what I am trying to find out.

The Witness: I see no connection there, necessarily.

By Mr. Paulson:

Q. That is what I am trying to find out. In other words, it does not occur to you when you are analyzing the Institute's statistics to appraise the location of base points around you?

A. No.

Q. Do you recognize this document, Commission's Exhibit 2241?

A. I remember the circumstances. I do not remember the letter exactly.

42427 Q. Well, I will show you Commission's Exhibit 2242. Do you recognize that? Do you recognize the signature on it,—can you tell me that?

A. Yes.

Q. Whose signature is it?

A. H. F. G. Wulf, president of the Monarch Cement Company.

Q. And is Commission's Exhibit 2241, and the letter to which Commission's Exhibit 2242, is the reply?

A. This is the reply to that; isn't it?

Q. Commission's Exhibit 2242 is a reply to Commission's Exhibit 2241.

A. May I read the rest of it there?

Q. Well, I am particularly interested in seeing whether you recognize the signature. I will be glad to let you read them, though. Do you recognize the signature on Commission's Exhibit 2244?

A. Yes, that looks like Mr. Wulf's signature.

Q. Well, do you think it is Mr. Wulf's signature?

A. I think so.

Q. If you want to look at them, that is all right.

(The witness examines the documents.)

Q. Showing you Commission's Exhibit 971-30-Q, is that your signature?

A. Yes, sir.

42428 Q. Mr. Neylan indicated to you that freight absorption you made on that Vicksburg bid was too large. What do you understand to be a reasonable freight absorption in the cement industry?

A. Well, I do not know that I could answer that.

42432 *Redirect Examination by Mr. Seeley.*

Q. I show you Commission's Exhibit 976-8-M, and I ask you whether that is your answer to the Clark and Burns questionnaire,—the answer of the Monarch Cement Company?

A. Yes, sir.

Q. I now show you, Mr. Brooke, Commission's Exhibit 976-7-R, to which Counsel for the Commission referred you on cross-examination, and I ask you to examine that and state whether that is your answer, or whether that exhibit was prepared by the Monarch Cement Company? You might look at the entire exhibit, beginning with 976-7-M.

A. 976—is that 7-M?

Q. And to 7-R.

A. Is not our answer.

Q. That exhibit does not represent anything prepared by your company?

42433 A. No, sir.

Q. Did you ever see that exhibit before Mr. Paulson showed it to you?

A. Not until Mr. Paulson showed it to me.

Q. Mr. Brooke, Mr. Paulson questioned you concerning prices that you had made concerning cement that you had sold at prices below your published prices in 1936 and 1937. Has the Monarch Cement Company sold cement to dealers for W. P. A. work at prices below its published quotations?

A. We have.

Q. Does the Monarch Cement Company have dealers in Oklahoma City and in Springfield, Mo.?

A. We have.

Q. Are you able to state whether you have made any sales of cement to dealers below published prices in

42434 the years 1935, 1936, and 1937?

A. At those two points, we have.

Q. Mr. Paulson questioned you concerning whether or not the dealers to whom you have made sales at prices below your published prices were engaged in contract work. Has it made any difference, Mr. Brooke, to your company in deciding whether or not you would sell cement at prices below your published prices, and in selling cement at prices below your published prices, has it made any difference to you whether the dealers were engaged in contract work, or did you sell at such prices to dealers who were not engaged in contract work as well as those who were?

A. We would not take that into consideration.

Trial Examiner Norwood: It would not make any difference?

The Witness: No.

By Mr. Seeley:

Q. Mr. Paulson questioned you, Mr. Brooke, concerning policies, the trucking policies, or the policies of the Monarch Cement Company in regard to sales of cement for truck delivery. Has the policy of the Monarch Cement Company in regard to trucking of cement ever been based upon or had anything to do with the price at which your company has sold its cement?

A. No, sir.

42435 Q. What prices did you quote in Kansas City, Metropolitan Kansas City, and the towns adjacent thereto?

A. We sold at the delivered price being quoted by the Kansas City mills; that is, the delivered prices that we found in the Kansas City market.

Q. And did you issue quotations, published quotations, at those prices?

A. Yes.

Q. To meet the prices that you found your dealers were getting at those points?

A. That is right.

Q. Did you determine how those prices were made up, or whether or not, as Mr. Paulson asked you, those

42436 prices related to a so-called basing point and were or were not the lowest combination of some base plus freight?

A. No. It was just a delivered price in the Kansas City—Greater Kansas City, you might say. Of course, it really has no relation to the freight rates, that I can say.

Q. Do you know, Mr. Brooke, whether the prices at which you sold cement in Kansas City and the surrounding area in 1936 and 1937 were prices that amounted to a so-called lowest combination of some mill base plus freight?

A. Well, I could name two towns where we tried to test out that price and our conclusion was that it was just the Kansas City price; that is Overland Park and Lenexa, on the M. & T. C., Olathe to Kansas City.

Q. Did that Kansas City price which you say you made and quoted in your published quotations reflect any particular mill base?

A. No, could not connect it.

Q. Are the sales of cement which your company
42437 has made in that area considerable or not considerable?

A. Oh, I would say it was considerable; we regarded it so.

42443 It is hereby stipulated that if E. E. Duque were to testify on his direct examination with respect to the matters hereinafter indicated, he would give as his testimony with respect to those matters the statements hereinafter set forth.

It is further stipulated and agreed that:

(a) The statements herein set forth may be read into the record as constituting the testimony of the witness with respect to those matters with the same force and effect as if the witness had actually given the testimony on his direct examination.

(b) The statements contained in this stipulation shall be given the same weight as if oral testimony had been offered to the same effect, and no inference shall be drawn, or any argument made, adverse to the weight or effect of such testimony by reason of the form and manner in which it is incorporated in the record.

(c) Counsel for the Federal Trade Commission shall have the right to move to strike any portion or portions of the statement, and said motions shall have the same force and effect as though the witness had been interrogated on the matters contained in the statement, and as though Counsel for the Commission had made objections to the questions propounded to the witness on the ground of materiality, relevancy, or competency of the evidence or part thereof. Said motions to strike shall be deemed
42444 to have been made as objections on the ground of materiality, relevancy, or competency for all purposes of this record prior to any statement made by the witness.

(d) All such motions by Counsel for the Commission to strike matter contained in the statement shall be made and ruled upon at the time this stipulation is presented to the Examiner and while Counsel for the said Respondent is present. If Counsel for the Commission makes such motion to strike any portion of the statement, and said motion is granted by the Examiner as to any portion of the statement, it shall be deemed that Counsel for said Respondent

has made no appropriate offer to prove the subject matter of the statement by the testimony of the witness as set forth in the statement, that Counsel for the Commission has objected to the offer on the grounds of objection stated in his motion to strike the item of the statement so stricken, as above provided for, and that the objection has been sustained by the Examiner.

(e) The personal presence or production of the witness, either at the hearing herein or upon the witness stand at said hearings or any part thereof, and as well the right to cross-examine said witness, are hereby expressly waived by the Federal Trade Commission and its Counsel; provided, that otherwise, and to the extent that the same are not inconsistent with the terms and conditions of this stipulation, the terms and conditions of the stipulation relative to the testimony of Charles Horner appearing
42445 at page 36801 of the transcript herein, shall be deemed to apply to the testimony of said witness.

(f) It is an inseparable condition of this stipulation that nothing herein contained shall be deemed to constitute any admission whatever on the part of the Federal Trade Commission or its Counsel that any of the statements contained in the statement attached hereto are or is true.

The sole purpose and intention of this stipulation is to shorten the hearing of the proceeding and to enable Respondent California Portland Cement Company to put on the testimony of the said witness without producing him at Washington where the hearings are being held.

1. I am president and a director of California Portland Cement Company. I have been president since the fall of 1939, 1939. Prior to that time I was vice-president and general manager and a director of the Company for 15 years. I have been with the Company since 1915.

2. California Portland Cement Company is a corporation organized under the laws of the State of California on September 18, 1891.

(3) The stock of the corporation is closely held, the great bulk of the stock being held by five stockholders. The stock records show that the holders of substantially all of the stock are residents of Southern California. I am
42446 personally acquainted with the stockholdings of the stockholders and with the residence of practically all of the stockholders, and know the above to be a fact of my own knowledge.

4. No officer or director of the Company is an officer or director of any other of the Respondent companies, except that I am a trustee of The Cement Institute.

5. I am personally acquainted with the relations between the Company and The Cement Institute, and am the officer and employee of the Company best acquainted with such relations. The Company became a member of The Cement Institute in 1933 while the Cement Code was being formulated under the provisions of the National Industrial Recovery Act. We deemed it necessary to join the Institute in order to participate in the formulation of the Code and in the passing on any proposals for the amendment thereof. In so doing we sought and acted upon the advice of our attorneys that our action was in conformity with law.

After the Code became inoperative in May, 1935, we were solicited by the officers of the Institute to continue our membership. They represented to us and we were convinced that the Institute would constitute a contact between the manufacturers of cement and the legislative and administrative bodies of the United States Government in matters affecting cement companies in general, such as special taxes, tariffs, reciprocal trade agreements, improvement of Government statistical services, et cetera. We
12447 believed that there was need for such a contact and continued our membership for this reason.

6. In joining the Institute or in continuing our membership, we did not know or believe that the Institute was created or existed for any purposes not fully disclosed in its articles of association as they existed in 1933 or as they were amended December 11, 1935.

I have never known or believed that it has been a function of The Cement Institute to interpret the policies of the cement companies or to formulate policies for the industry, either through its principal office or its officers or trustees, or through any regional offices, freight bureaus, or committees. I have not known or believed that the Institute has existed or acted for the promotion of a combination among cement companies to hinder, lessen, restrict, or restrain competition in price among cement manufacturers, or to establish or maintain a "multiple basing point pricing system" or any system or method of pricing.

7. Our Company has never furnished to The Cement

Institute any information concerning credits, information concerning specific job contracts, or other contracts for the future delivery of Portland cement, information concerning production or stocks on hand of clinker or Portland cement, information concerning cloth sack returns, or information concerning shipments of Portland cement except that furnished for the purpose of fixing dues.

42448 8. At no time did The Cement Institute or any of its committees have anything to do with the formulation or carrying out of any of the business or sales policies or practices of California Portland Cement Company. At no time did Portland Cement Association or any of its committees have anything to do with the formulation or carrying out of any of the business or sales policies or practices of our Company. These statements are not meant to apply to the Cement Code Authority during the time of its existence.

9. I have never known, considered or believed that the methods by which prices of cement have been fixed or quoted in Southern California or in any California markets where our Company has done business, or the methods by which prices of cement have been fixed or quoted in Arizona or in the portion of Nevada in which we have done business, or any of such methods, are or is the same as, or similar to, the price methods or systems used in the eastern part of the country or the system described in the complaint as a "multiple basing point price system."

10. I have never known or believed that our Company has ever had or can have any substantial competition with any cement mill located out of the State of California other than the El Paso mill which is owned by a company which also has a mill at Victorville, Calif., except perhaps on large Government jobs.

42449 Mr. Davis. Very well.

Then I wish to offer at this time the stipulation relative to the testimony of James A. Blair; that is, that if he were on the stand he would testify in his direct examination in the manner and to the effect set forth

42450 in the statement which is attached to the stipulation. The terms of the stipulation are stated in some detail in the stipulation.

42452 It is hereby stipulated and agreed that if James A. Blair were to testify on his direct examination with respect to the matters hereinafter indicated, he would

give as his testimony with respect to those matters the statements hereinafter set forth.

It is further stipulated and agreed that:

(a) The statements herein set forth may be read into the record as constituting the testimony of the witness with respect to those matters with the same force and effect as if the witness had actually given the testimony on his direct examination.

(b) The statements contained in this stipulation shall be given the same weight as if oral testimony had been offered to the same effect, and no inference shall be drawn, or any argument made, adverse to the weight or effect of such testimony by reason of the form and manner in which it is incorporated in the record.

(c) Counsel for the Federal Trade Commission shall have the right to move to strike any portion or portions of the statement, and said motions shall have the same force and effect as though the witness had been interrogated on the matters contained in the statement and as though Counsel for the Commission had made objections to the questions propounded to the witness. Said motions to strike shall be deemed to have been made as objections for all purposes of this record prior to any state-
42453 ment made by the witness.

(d) All motions by Counsel for the Commission to strike matters contained in the statement shall be made and ruled upon prior to the discharge of the witness. If Counsel for the Commission makes a motion to strike any portion of the statement and said motion is granted by the Examiner as to any portion of the statement, it shall be deemed that Counsel for said Respondent has made an appropriate offer to prove the subject matter of the statement by the testimony of the witness as set forth in the statement and in other testimony of the said witness given or appropriately offered herein, that Counsel for the Commission has objected to the offer on the grounds of objection stated in his motion to strike the item of the statement so stricken, and that the objection has been sustained by the Examiner.

(e) The witness shall also be offered for cross-examination to Counsel for the Commission as to all or any part of the statements hereinafter contained.

(f) The witness may be examined on redirect examination by Counsel for the Respondents as to any subjects

touched on during the cross-examination of such witness, as to his qualification to testify on the subject matter of any statement as to which Counsel for the Commission objects on the ground of lack of qualification, and as to the identification of any document as to which Counsel for the Commission objects on the ground of insuf-
42454 ficiency of identification.

(g) The statements are as follows on pages 1 to 50, hereto attached.

(h) This stipulation shall not be deemed to constitute any admission whatever on the part of Federal Trade Commission or its Counsel that any of the statements contained in the attached statement are true. The sole purpose and intention of this stipulation is to shorten the hearing by introducing the testimony of the witness on direct examination in the manner herein provided.

1. I am chief clerk in the sales department of California Portland Cement Company and have been such since 1927. I have been employed by the Company in the sales department since 1921.

2. I have been familiar with the marketing methods and practices of California Portland Cement Company since 1921. As chief clerk in the sales department, I have had charge of the sales records, and practically all sales made by the Company have gone through my office and been recorded on sales documents or records by me or under my direction.

3. I have files of the Company's price lists and am, and have kept myself, informed of the prices stated in the price lists. I have records showing the names and addresses of customers and sales made to customers, and am familiar therewith. I have records of the sales made at the various delivery points, and am familiar with the character
42455 and extent of sales and markets.

4. I have made the calculations for most bids on Government invitations for many years and have prepared the bids. I have had charge of the sending in of the bids and keep the copies of bids and correspondence in the files in my office.

5. California Portland Cement Company is a corporation organized under the laws of the State of California on September 18, 1891.

6. The Corporation has one cement mill located on a large parcel of land near Colton, Calif., which has been owned by the Company since 1892.

7. Its limestone is quarried from deposits on the property on which its mill is located.

8. The Company's mill and the source of its limestone have been located on the same parcel of land since 1892.

9. The Company markets the great bulk of cement produced by it within the State of California, the percentage of its entire production marketed in California during the past ten years being approximately 96 percent.

10. The Company's interstate commerce is made up of commerce in cement sold or delivered for points within the State of Arizona, and negligible quantities for the States of Nevada and Utah totaling approximately 4 percent of its total cement sales on an average for the 42456 past ten years.

11. The Company's records of total commerce and interstate commerce in cement are numerous and bulky, and the information regarding quantities of total sales and of shipments out of the State can be obtained only by long calculations. I am familiar with the records and have made the examination and calculation to determine the quantities of such sales. I have calculated and set down the percentages of interstate sales for exemplary years on the following table which is accurate within a fraction of one percent.

PERCENTAGES OF INTERSTATE SALES TO TOTAL SALES

	1927 Percent	1929 Percent	1931 Percent	1933 Percent	1935 Percent	1937 Percent
Arizona						
Dealer	1 191	2 583	3 056	1 534	2 380	2 811
Direct	2 110	4 391	5 321	1 934	1 309	1 021
	3 301	6 894	8 377	3 468	3 689	3 832
Nevada						
Dealer	0 023	0 143	0 240	0 053	0 007	
Direct	0 017		0 014			
	0 040	0 143	0 254	0 053	0 007	
Utah						
Dealer			0 836	0 013		
Direct	0 016	0 051				
	0 016	0 051	0 036	0 913		
Government						
Arizona	0 154	0 190	0 293	0 069	0 363	1 196
Nevada				32 501	7 288	0 018
Utah				0 013		
New Mexico					0 011	
	0 154(A)	0 190(B)	0 293	32 583(C)	7 662(C)	1 214
Total	3 511	7 278	8 960	36 117	11 358	5 046

Notes:
A—Direct shipments to Carl Pleasant, for Pleasant Dam.
B—Salt River Valley Water Users Association.
C—Boulder Dam; All-American Canal; Bartlett Dam. Sold f.o.b. mill.
Percentages figured on our total business.
Revised 6-5-40.

12. I keep informed regarding the Company's competition. We have no competition in our California business with any mill located out of the State or with cement produced out of the State. There is practically no cement shipped into the territory in Southern California in which the Company markets cement from any other State except very small quantities of special cements of types not produced by the Company.

13. Our traffic department has a table of freight rates from all mills which might possibly compete in selling cement in the territory where our Company operates. For

gauging possible competition in Southern California, I have referred to and state to you the following freight rates, as shown by our information records, from the nearest out-of-State mills to the California points nearest such mills for which a freight rate is quoted. I set forth the rate from the Southern California mills to the same points, as shown by our information records, for comparison. The rates are those shown to be in effect July 1, 1936.

		Per Cwt.	Per Bbl.
(a)	Salt Lake, Utah, to Daggett, Calif.	42c	1.596
	Colton to Daggett	9c	.342
	Victorville, to Daggett	6c	.228
(b)	El Paso to Colorado, Calif.	45c	1.73
	El Paso to Indio, Calif.	59½c	2.26
	Colton to Colorado, Calif.	28c	1.06
42459	Colton to Indio	9c	.342
(c)	Portland, Colo. to Needles, Calif.	53c	2.014
	El Paso to Needles	48½c	1.84
	Colton to Needles	25c	.95

In gauging the ability of the Salt Lake, Portland, Colorado, and El Paso mills to compete with us in Southern California, I have understood and relied on information that the relationship between the above rates has not substantially changed, that a change on January 1, 1937, involved only a removal of a one-cent per hundredweight emergency charge, that the next change on November 15, 1937, restored the emergency charge.

14. Our Company attempts to keep informed about the business being done by our competitors so that we can know the competition which we are required to meet. Among statistics gathered and kept for this purpose, the Company has a record of statistics of imports of foreign cement into Los Angeles harbor. I have examined the record and in testifying regarding competition have based my answers in part on such records and upon the quantities of imports shown thereby as follows:

	1931	4083 bbls.
	1932	4351 "
	1933	3865 "
	1934	1853 "
42460	1935	402 "
	1936	405 "
	1937	400 "

15. The Company does not maintain a pricing system for the sale of cement in California under which prices are fixed on a basis of a mill price plus freight to the destination. For more than ten years the Company has maintained blanket prices for trade areas in Southern California and has disregarded the differences in the freight rates from its mill, and the mill or shipping point of any competitor, to the various destination points within a trade area.

16. The boundaries of the various trade areas in Southern California for which blanket prices have been fixed and the prices fixed for the various trade areas has been changed from time to time to meet competitive conditions, regardless of differences in freight rates from the Company's mill, and the mill or shipping point of a competitor, to the various points within the respective trade areas.

17. Our traffic department keeps a tabulation of freight rates from our Colton mill and the mills and shipping points of our competitors to many points to which we ship cement for use in bidding on Government invitations. I have checked this record for the purpose of corroborating my testimony above. To illustrate my testimony and for purpose of example I have selected several points having equal destination prices in the noted trade areas 42461 and set forth the freight rates from the several mills and shipping points to such points as such rates are shown on the records of our traffic department. The freight rates are those recorded for 1937 prior to November 15.

DESTINATION	Gross Price in Cloth	Freight Per Cwt.	Freight Per Bbl.	Mill Net Colton
Los Angeles	2.32	0.04	0.152	1.568
Long Beach	2.32	0.045	0.171	1.549
Redondo Beach	2.32	0.050	0.190	1.530
San Diego	2.52	0.095	0.361	1.559
La Mesa	2.52	0.110	0.418	1.502
Chula Vista	2.52	0.125	0.475	1.445
Ventura	2.48	0.090	0.342	1.538
Oxnard	2.48	0.085	0.323	1.557
Santa Paula	2.48	0.075	0.285	1.595

Price List: October 12, 1936.

Freight rates from Colton to all points shown are as low or lower than those from any other mill in Southern California.

18. It has been our practice to make up price lists in which prices are quoted for practically every freight point in Southern California. These price lists are issued for the use of the Company's employees in the sales department. They have not been distributed to the trade, either to dealers or other buyers or users, except during the Code period, December 12, 1933, to May, 1935. Except in a
42462 few instances the price lists issued by the Company were issued to evidence prices which had been announced or put in force by a competitor prior to the issuance of our price list or to make an orderly restatement of price changes which had been made between the date of the last preceding list and the new list. Price lists of our Company have been introduced in evidence as Exhibits 1304 to 1312. The fact that any list bears a date, or the fact that the prices stated on any list are noted to be effective on a date, is no indication that the list was printed or issued on that date or a prior date. In most cases where prices were decreased, the lists were prepared and mimeographed after the effective dates of the price lists. In most cases the lists were prepared after price lists of a competitor had come to our attention. In cases where prices were decreased by a new price list, customers were given the benefit of the decreases on purchases made on or after the effective date. Salesmen have been instructed to sell cement at prices noted on the lists except when they are instructed otherwise by the management. Prices are generally changed at points to meet competition, regardless of the price list prices.

19. I am quite familiar with the freight rates to the Arizona points to which the Company ships cement, have examined the tabulations of such rates kept by our traffic department. I have dealt with many invoices and bills of lading for many years. I am somewhat familiar
42463 with the rates to the same points from the mills and shipping points of our competitors and the records of our traffic department regarding such rates. I am familiar with the Company's sales to Arizona points for many years and with the records kept of the sales. I have examined our records, and the tables and lists in this testimony set forth the results of my examinations. The rec-

ords are bulky, are in current use, and the information given would not be readily obtainable from them in court or by examination by one not familiar with them.

20. It has been the Company's practice for more than ten years to print a price list stating a price for cement at practically every freight station in Arizona. The price lists have not been distributed to the trade, either to dealers or other buyers or users, except during the Code period. This system of pricing has been in use since I came to the Company in 1921. Before the Code period price list of December 12, 1933, was prepared, the list of stations or destinations was much shorter than the present list. The first Code price list was prepared to show a price for every rail station, and for all points off rail where it was likely that cement might be sold, because the Code seemed to require that cement might be sold, because the Code seemed to require that we have a price fixed for every place at which a sale might be made. Since the Code, our price lists have been prepared by merely changing the prices on the same station list, except that a station is removed 42464 when we learn that the railroads have ceased to quote freight rates for the point, and a new station is added when we have occasion to bid or quote for a sale of cement at some unlisted point. Except in one or possibly two instances, the prices stated in our Arizona price lists for the past ten years have been fixed by following the prices which we have found quoted by one or more of our competitors. For some destinations in eastern Arizona, in some instances we have not had full information of the El Paso mill's prices.

21. For more than ten years the commercial freight rates from Colton to the destination points in Arizona which constitute the principal market for cement have been the same as the commercial freight rates to such destinations from the El Paso mill and the mills and shipping points of the other Southern California companies. We have based our marketing practices in this territory on this basis. Our records show that our freight rates for such territory have been as follows:

	Per Cwt.	Per Bbl.
To Apr. 18, 1935	.305	1.159
Apr. 18, 1935—Jan. 1, 1937	.315	1.197
Jan. 1, 1937—Nov. 15, 1937	.305	1.159
Nov. 15, 1937—Mar. 28, 1938	.315	1.197
Mar. 28, 1938	.34	1.292

22. Upon the changes in freight rates which resulted from adding and removing the ~~two~~ cent per hun-
42465 dredweight emergency charge, the competitive prices at which cement was sold were not changed by the amount of the change in the freight rate, and the Company continued to meet competition and to quote the prices in force before the rate change, until the next price list was issued as shown by exhibits introduced herein.

23. At the times of their respective preparation, the prices stated on the Company's price lists for Arizona destinations to which the freight rates from the Colton mill were not greater than the freight rates from a competitor's mill or shipping point, were equal to a uniform mill net plus freight from Colton to the respective destinations. This was true according to the calculations made by the sales and traffic departments of the Company.

24. At such times, the prices stated on such price lists for destinations for which a competitor had a freight rate advantage, were equal to the price which our Company thought the said competitor was quoting for such destination, regardless of mill nets and freight rates. There have been instances where a keener competition in the common blanket freight rate area has brought about price reductions for destinations in that area where the old price was retained in the eastern area where the El Paso mill has the lone freight rate advantage.

42466 25. The ordinary private buyer's market for cement in the zone of Arizona immediately to the east of the zone where the El Paso mill's freight rate advantage commences is very small, and the Colton mill's sales in such territory have been very small.

26. The Company's sales of cement for delivery in the portion of Arizona easterly from the line where the El Paso mill's freight rate advantage commences have constituted a very small percentage and very unimportant part of the company's total sales.

27. The number of dealers and the number of contractors and other direct purchasers, and the number of Government orders to which the Company made sales of cement for delivery in the part of Arizona easterly from the point where the El Paso mill's freight rate advantage commences, were approximately as follows for the years noted, which are typical:

	Government Orders	Number of Dealers	Number of Direct Purchasers other than Dealers
1927	None	1	1
1929	3	4	3
1931	3	3	9
1933	2	5	6
1935	3	6	3
1937	1	7	3

28. The following is a list of towns in Arizona at
42467 which the Company has had a dealer account at any time during the past ten years:

Phoenix	Casa Grande
Glendale	Coolidge
Tempe	Prescott
Mesa	Clarkdale
Wickenburg	Jerome
Yuma	Kingman
Gila	Williams
Tucson	Flagstaff
Nogales	Winslow
Ajo	Holbrook
Florence	Bisbee
Lowell	

29. The Company has not engaged in the solicitation of sales of cement in the part of Arizona easterly from the line where the El Paso mill's freight rate advantage commences, except in the town above noted which are easterly of said line.

30. Its sales of cement in said territory have been almost entirely to supply dealers in the points above noted with which the Company has had a regular business, and to supply cement for specific jobs in the said eastern territory for contractors with which the Company has regularly dealt.

31. There are many destination points in Arizona
42468 for which the Company has shown a price on its price lists for which it has sold no cement. For example, the price list shows prices for the mining section at Duncan, Clifton, Guthrie, whereas I do not know of,

and have not found any record of, any sale for such destinations.

32. In the table in answer 11, I have shown that the Company has not sold cement in any material quantity in Nevada, although it has kept a price list for destinations in the southern part of the State. The Company's price lists have not been sent or distributed to dealers or prospective cement buyers, but have been printed and used only for use of the sales and accounting office.

33. The Company had an account with a dealer in Las Vegas, Nevada, for the period from February, 1929, to May, 1936, but at other times and at other places has had no dealer account in Nevada.

34. Sales to public buyers for Nevada destinations for the past ten years have been practically entirely for use in the Boulder Dam project, and prices for such project were not based upon any price list or any basing point.

35. The Company has had very few requests (except from the railroads and the United States) for the purchase of cement f.o.b. mill, and has had no requests (except from the railroads and the Government) for f.o.b. mill purchases for rail shipment.

42469 36. The Company has sold cement to buyers for Arizona delivery f.o.b. mill loaded on trucks owned, hired or provided by the buyer when requested by buyer, and has fixed the price on the basis of the price list destination price less the commercial freight rate. The Company has one regular Arizona customer who buys cement regularly on such basis, and accords the same privilege to buyers who request it. The Company has quoted and sold cement to the United States for Airzona and Nevada points on an f.o.b. mill basis for many years.

37. In fixing prices for cement, whether on an f.o.b mill or destination basis, it is my experience that competitors will learn of the price at which sales are made and will meet lower prices in order to retain old business and to compete for new business, with the result that cut prices tend to result in general price decreases with no permanent shift in any company's customers. This tendency operates to discourage price cutting. By price cutting I mean selling to an individual customer at a price below a generally quoted price in order to induce the customer to buy.

38. It has been my experience that in most cases the issuance of a new price list has been preceded by price cutting which has gradually increased in extent until the old price list has no longer stated the prices which were actually in use.

42470 39. The Company did not bid on any of the invitations of agencies of the United States referred to in paragraph Six of the complaint.

40. The Company has not withdrawn or asked permission to withdraw any bid made to the Federal Government.

41. The Company has submitted many bids in answer to invitations of the United States and agencies of the United States, and in the great bulk of such biddings the Company's bid was calculated on such a basis that it would be practically impossible for its bid to be tie or identical with the Government's destination cost on bids submitted by competitors.

42. The Company did not bid on any of the State Highway biddings referred to in paragraph six of the complaint.

43. The Company has not during the past eight years submitted bids to any State Government or agency, or any county, municipality or district for cement to be delivered outside the State of California, except on one contract with Salt River Valley Water Users Association of Phoenix.

44. The Company has not received invitations from the State Highway Commission of Arizona for bids for cement.

45. The Company has not received invitations from the State Highway Commission of Nevada for bids for cement.

46. So far as the Company's records show, and so far as I know, the Highway Commissions of Arizona and Nevada have not purchased cement for highway con-

42471 struction, but have contracted with private contractors to construct roads and highway structures, including the furnishing of the cement.

47. The Company has not received or used any of the freight rate books published by The Cement Institute.

48. The Company has kept a tabulation of freight rates from its mill to destinations shown on its price lists for use of the sales and accounting departments. Up until

1933 it kept a list showing prices, freight rate from Colton, and mill nets for each destination. This list has not been kept up since 1933.

49. The Company maintains and keeps up to date, to some extent, tabulations of freight rates from its own mill and the mills and shipping points of its competitors to certain points to which it customarily ships cement, which are made up from the tariffs of the railroads and the Pacific Freight Tariff Bureau, information received by direct inquiry to the railroads and information available from freight bills. These tabulations are made solely for the Company's use, principally for information in making Government bids. A sheet from the said tabulation showing form thereof is attached hereto as an example as Respondents' Exhibit 3440.

50. The spur tracks at the Company's mill are directly connected with the railroads of Southern Pacific, Atchison, Topeka & Santa Fe, Union Pacific, and Pacific Electric Companies. Practically every destination with
42472 which the Company does business, practically every destination on its price lists, and every destination to which cement is delivered in any substantial quantity by rail, is located on one of the said railroads. The tariffs of the companies are available to the Company, and the relationships between the Company's traffic department men and the men in the railroads' freight offices are extensive and intimate. The Company gets its freight rate information from the railroads.

51. The Company did not send land grant freight rate information to The Cement Institute as suggested in the Institute circular sent out in December, 1935, or as suggested otherwise. The Company did not ever use, or make any bid on the basis of, any land grant freight rate information received from The Cement Institute.

52. The Southern Pacific Railroad and the Atchison, Topeka & Santa Fe Railroad are the only railroads over which the Company ships cement which have land grant freight rates, and each of the said roads for many years has maintained the policy of furnishing on request a statement showing the land grant freight rates to any requested destination from each of the mills which can compete in selling cement for such destination.

53. When two or more companies have requested statements for the same destinations on receipt of Government invitations for bids for such destinations, the rail-
42473 roads have furnished the same information to the requesting companies.

54. The railroad companies have expressed resentment over receiving repeated requests for the same information from several companies and have requested that a method be worked out whereby the information furnished on one request could be furnished to all companies desiring the same information. After the organization of the Pacific Coast Cement Institute, Mr. Keller suggested that he could perform this function, and late in 1936 the railroads expressed preference for reporting to Mr. Keller and avoiding the duplication of reports. We have not based our Government bids on any mill base plus exact land grant rate from the mill with the most favorable rate. We know in a general way from experience the approximate relation between our land-grant rates and our competitors' rates. This information is all that we need in our method of bidding since we have practically always bid in event cents. If we think we need more accurate information, we generally check with the railroads.

55. There have been a number of situations where we have worked with the Riverside Company on rail rate problems because our interests in competition with competitors is exactly the same. We worked together to retain and obtain a higher differential in rates as against Monolith and Victorville. Land-grant rates generally operate unfairly against us and in favor of Monolith. For ex-
42474 ample, for destinations on the Southern Pacific in Arizona, every shipment from Monolith must go through Colton and travel about 170 miles before reaching Colton. Still the Monolith land-grant rate to Southern Pacific points in Arizona is lower than Colton's rate. When the Bartlett Dam invitation was received, we worked with Riverside to induce the railroad to give a special rate for the job equal to or under the Monolith rate. It was obvious that the railroad would not give a special rate to Colton without giving the same rate to Crestmore.

56. Before the development of good highways from the cement mills to the principal markets in Southern Cali-

fornia, and between the established market centers in Southern California, cement was not delivered by truck. Colton and Crestmore, being nearer to the principal market centers in Southern California than Victorville and Monolith, enjoyed a small rail freight rate advantage in selling cement in such market centers. With the improvements of highways and the development of pneumatic tires in the '20's, the trucking of cement increased, particularly by the outer mills. In the late '20's the inner mills negotiated with the railroads for an increase in the differential between the freight rates from the outer mills and from the inner mills to the principal markets. Later, litigation to obtain this result was conducted and the inner bills shifted business to the rails to induce the railroads to increase the differential in such freight rates. The negotiations
42475 and litigation ended unfavorably to the inner mills in 1930 and Colton thereafter increased its truck deliveries. In mid-1934 the differential was increased to 2 cents per hundredweight and Colton shifted business to the rails as a reward and inducement for the rate change. The differential was lowered again in 1939. The ups and downs of trucking resulted from these contests over rail rates between the inner and the outer mills. At the present time, the great bulk of cement used in Southern California is transported by truck.

The Company has permitted buyers to take delivery at the mill on trucks provided by the buyers for many years. During the years when our trucking was small, the method of delivery was inconvenient and bothersome for the warehouse and delivery departments because we were not equipped with a force or space to handle the loading. As our own trucking became more common, we abandoned the charge for mill delivery to truck and have made no extra charge since 1930. Our warehouse and shipping departments still complain of the inconvenience of such method of delivery.

57. The following table shows the percentages of our Company's shipments of cement transported by rail and by truck for the noted years. I have checked the Company's records and the table sets forth the results of my check. The information would not be readily avail-
42476 able from an examination of the books in court.

California Portland Cement Company.

Percentages of Rail and Truck Shipments From Colton.

Year	Rail	Truck
1922	79.25	20.75
1923	87.55	12.45
1924	95.83	4.17
1925	93.90	6.10
1926	89.17	10.83
1927	91.87	8.13
1928	97.67	2.33
1929	94.57	5.43
1930	52.30	47.70
1931	45.69	54.32
1932	45.87	54.13
1933	54.50	45.50
1934	70.09	29.91
1935	61.71	38.29
1936	76.57	23.43
1937	66.34	33.66
1938	57.42	42.58
1939	35.01	64.99

58. The Company has never adopted the practice of delivering cement by truck in Arizona. It has followed 42477 the practice of allowing purchasers who request it the privilege of taking delivery at the mill on trucks provided by the purchaser and of allowing such purchasers a deduction from the destination price in the amount of the commercial rail freight rate to the purchaser's destination. Attached as Respondents' Exhibit 3441 is a copy of an invoice for cement so delivered which is typical and exemplary.

59. Requests for delivery at the mill on trucks provided by the purchaser are extremely rare. Such requests are so rare, in fact, that it is impractical to provide facilities for delivery in such manner, and the few deliveries so made are a source of a good deal of inconvenience and bother to the shipping department at the mill and the practice is discouraged for this reason. Practically all purchasers desire delivery at destination and a price fixed on that basis.

60. The Company has not met with any problem in the diversion of shipments of cement in transit. The trade areas are geographically separated from each other by

ranges of hills or mountains or are widely separated by sparsely settled territory. The differences of freight rates and trucking costs between trade areas when compared with price differentials offer no advantage to diversion. We have never adopted the practice of stamping or printing a provision against diversion on our bills of lading.

61. Except in relatively few instances during the 42478 Code period, November 27, 1933, to May 27, 1935, the Company has followed the practice of bidding on Federal Government invitations on an f. o. b. mill basis.

62. In most of its bids, the Company has based the bid price on its generally offered price for the destination named in the invitation, less the commercial freight rate, sometimes with, and sometimes without, an additional deduction of cents generally without fractions or decimals. Since transportation from the Company's mill and the mills or shipping points of the Company's competitors to most Government destinations was in part over land-grant railroads, the freight rate from the Company's mill to Government destinations was in most cases different from the Government's freight rate from competitors' mills and shipping points. As a result, the Government's destination cost on the Company's bids in practically every instance has been different from the destination cost on bids of competitors. The Company has not had or followed a policy or practice of fixing its prices on Government bids by attempting to determine the exact land-grant rate of the most favored competitor and deriving a bid which it thinks will be tie in destination cost with competing bids. Examples of the calculations by which bid prices were determined by the Company will be offered in evidence.

63. The following are tabulations of bids submitted by the Company in the noted years on invitations for 42479 bids issued by the following agencies of the United States Government: Reclamation Bureau, Indian Service, Navy Department, Army Engineers, Forest Service, National Park Service, Department of Agriculture.

Bids Made by California Portland Cement Company on Invitations of Agencies of United States.

BIDS MADE BY CALIFORNIA PORTLAND CEMENT COMPANY ON INVITATIONS OF AGENCIES OF UNITED STATES RECLAMATION BUREAU

Year	No. of Bids	Invited Price Basis		Bid Price Basis	
1925	4	Dest. or Sh. Pt.	4	Mill	4
1926	1	" " " "	1	"	1
1927	3	" " " "	3	"	3
1928	3	Shipping Point	3	"	3
1929	3	" "	3	"	3
1930	1	" "	1	Dest.	1
1931	1	" "	1	Mill	1
1932	None				
1933	1	Dest. or Sh. Pt.	1	Mill	1
1934	2	" " " "	2	Dest. (Control Clause)	2
1935	9	" " " "	9	Mill	9
1936	30	" " " "	30	"	30
1937	27	" " " "	26	Dest. Price and deduct commercial freight rate	11
		Shipping Point	1	Mill	16
1938	2	Dest. or Sh. Pt.	2	Mill	2

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INDIAN SERVICE

1933	30	Dest. or Sh. Pt.	27	Mill	28
		Sh. Pt.	2	Dest. (Code)	1
		Sherman	1	Sherman	1
1935 (after Code)	12	Dest. or Sh. Pt.	10	Mill	10
		Sherman	2	Sherman	2
1936	66	Dest. or Sh. Pt.	60	Mill	59
		Sherman	6	Sherman	6
				Holbrook	1
1937	18	Dest. or Sh. Pt.	14	Mill only	2
		Sherman—Pala	4	Mill and allow com'l frt.	11
				Sherman—Pala	4
				Other dest. only	1
1938	38	Dest. or Sh. Pt.	32	Mill	31
		Sh. Pt.	2	Dest.	7
		Dest.	4		

NAVY DEPARTMENT

1935	13	Dest. only	13	Dest.	13
1936	15	Dest. only	15	Dest.	15
1937	18	Dest. only	18	Dest.	18
1938	20	Dest. only	20	Dest.	20

42481 ARMY ENGINEERS

Year	No. of Bids	Invited Price Basis		Bid Basis	
1935	3	Job	2	Job	2
		Sh. Pt.	1	Sh. Pt.	1
1936	4	Job	3	Job	3
		Dest.	1	Dest.	1
1937	4	Job	4	Job	4
1938	10	Job only	3	Job only	3
		Job or Sh. Pt.	5	Mill	7
		Sh. Pt.	2		

42482 FOREST SERVICE

Year	No. of Bids	Invited Price Basis		Bid Basis	
1935					
(after Code)	21	Dest. only	10	Dest.	10
		Dest. or Sh. Pt.	7	Dest. (Control Clause)	2
		Sh. Pt. only	4	Mill	9
1936	47	Dest. Gov't B/L	17	Mill	39
		Dest. or Sh. Pt.	10	Dest. only	8
		Dest. only	7		
		Sh. Pt. only	13		
1938	48	Dest. only	7	Mill	39
		Dest. or Sh. Pt.	32	Dest. only	9
		Sh. Pt. only	9		

42483 NATIONAL PARK SERVICE

Year	No. of Bids	Invited Price Basis		Bid Basis	
1935	19	Job only	17	Dest. only	17
		Dest. or Sh. Pt.	2	Mill only	2
		Sh. Pt. only	0		
1936	12	Job only	7	Dest. only	8
		Dest. or Sh. Pt.	3	Mill	4
		Sh. Pt. only	2		
1937	14	Job only	10	Dest. only	11
		Dest. or Sh. Pt.	3	Mill (Dest. less com'l frt.)	3
		Sh. Pt. only	1		
1938	9	Job only	8	Job	8
		Sh. Pt. only	1	Mill	1

DEPARTMENT OF AGRICULTURE

Year	No. of Bids	Invited Price Basis		Bid Basis	
1936	12	Sh. Pt. or Dest.	12	Mill	10
				Dest.	2
1937	23	Dest. only	6	Dests only	8
		Dest. or Sh. Pt.	12	Mill (by deduct com'l frt.)	15
		Sh. Pt. only	5		

42484 64. The Company bid on the invitations of March 30, 1938, (Commission's Exhibit 1339), for bid zones 29-A, 29-B, and 30-B, a territory wider in extent than the territory normally served by it. Its bids were on Items 1 and 3 for each zone. The cement called for by Items 2 and 4 is not a standard cement and the Company does not normally manufacture it. The Company bid for each zone and each item $1.98 per barrel in cloth; $1.78 per barrel in paper; $1.50 per barrel in bulk. This is the normal differential among the three methods of packing. The price is less than the mill net realized from commercial sales at prices prevailing on March 30. Los Angeles price, $2.40; discount 20 cents; commercial freight 17.1 cents; net f. o. b. mill in cloth $2.02. The bid was accompanied by a letter a copy of which is attached hereto and marked Respondents' Exhibit 3442.

65. On the invitation dated April 29, 1938 (Exhibit 1381), the Company bid $1.64 f. o. b. cars or f. o. b. trucks at the bidder's mill, Government's option. The invitation did not disclose the destination or point of use. The invitation did not indicate that points of use or destination had been determined on the date of the invitation. Monolith bid $1.53 net and that bid was accepted. The invitation furnished no information from which the Government, the Comptroller General, or a bidder could determine which bid was low. If no destination had been selected at
42485 the time, it would be impossible to determine which bid gave the Government the lowest destination cost. It was within the power of the Procurement Officers, by selecting a destination, to favor and select a bidder to whom the award should be made. For delivery in Los Angeles by truck at Railroad Commission rates, and for delivery at several other points in Southern California by truck or by rail, the Company's bid was the most favorable to the Government. The letters attached hereto marked Respondents' Exhibit 3443-A to 3443-N, from the Company to the Procurement Office, and from the Procurement Office to the Company, are from the Company's file with reference to the bid.

66. At the time I went with the Company in 1921, and continuously to date, the Company's most regular and reliable business has been that done with building material dealers. The Company does the great bulk of its dealer business with dealers with whom it has dealt for many

years. The Company has not had or enforced any definition of a "dealer," except possibly during the Code period. There has been no general change in the class of customers which the Company sells and regards as dealers since I have been with the Company except that of late years the Company has sold rock-producing companies as dealers whereas it formerly did not. While the sales department has been instructed for many years that the Company is dependent on its regular dealers for a good proportion of its business, and that we must maintain good rela-
42486 tions with dealers who have proved to be good outlets for cement, and avoid actions which are likely to cause a satisfactory dealer to prefer a competitor's cement, no definite limitations have been imposed as to what constitutes a dealer who may be sold as a dealer.

67. The Company has instructed the sales department for many years to sell direct only according to instructions on the price lists. The classifications of customers to which the Company has sold direct are noted on sheets attached to the price lists in evidence. The Company's policy in this regard has developed over a long period of years. The policy depends to a large extent on custom and usage. Changes in policy develop with changed conditions and under the influence of competition. I understand that the Company has always sold direct to dealers, to agencies of the Federal Government, and to the State of California and certain Southern California counties and municipalities for big buys. Prior to a year in the early '20's, the California State Highway Commission, and at times the County of Los Angeles, bought cement direct for highway construction. Since a date in the early '20's, the practice has been changed and highway construction contracts have provided that the contractor shall furnish the cement. Since this change, the Company has sold direct to highway contractors for large jobs. Cement products manufacturers buy regularly in large quantities with fixed places
42487 of delivery and have no need for dealer service.

68. There are several reasons for selling direct for large buys which compel the adoption of the practice. First, it has been found that many dealers are not financially responsible to a degree sufficient to protect the Company in cases of large sales; second, many dealers are not reliable in protecting their lien, withhold, or bond rights against contractors on large jobs; third, rates and times

of delivery for large construction jobs are irregular, and the buyers prefer to deal direct with the manufacturer in arranging deliveries; fourth, large purchasers, particularly public purchasers, require direct guarantees by a seller of greater responsibility than the ordinary dealer that the contract of purchase will be performed.

69. There has been practically no change in the classifications of work for which cement is sold direct for the past 15 years, except that the statement of the classifications was changed somewhat during the Code period.

70. The Company's terms of sale have been substantially the same since 1926. I have not carried my analysis back beyond that date. The Company has not made any general statement to the trade of its terms of sale except in its price lists issued during the Code period. The only general statement of selling terms issued to the sales department is that attached to the price lists.

42488 71. Discount for prompt payment has been 20 cents per barrel since 1926, except that during the Code period and for a few months thereafter it was reduced to 10 cents per barrel. Terms of discount have changed in that for several years prior to December 12, 1933, the discount was allowed on invoices dated between the 1st and the 15th if payment was made by the 25th of the same month, and on invoices dated between the 16th and the last day of month if paid by 10th of following month. Terms of discount since the Code period are shown by price lists in evidence.

In a few cases the Company has sold cement in areas where Northern California companies sell on a basis of a ten-cent discount and where the trade is accustomed to buying on that basis and our Company has made sales on that basis.

72. The contract of sale in practically all of its sales consists only of the blank form, a copy of which is attached hereto as Respondents' Exhibit 3444, with the blanks filled in and signed by the parties. The cement is invoiced on a form, a copy of which is attached as Respondents' Exhibit 3445. The practice regarding payment of freight varies with different customers and destinations, so the Company has a rubber stamp with which it stamps on invoices for shipments where freight is not prepaid the following: "This invoice covers price at destination

named. Receipted freight bill should be forwarded
42489 to us for credit." Invoices generally do not show amount of freight. I am speaking of the period before and after the Code period.

73. The Company's aggregate investment in prepaid freight is considerable from month to month, and the sales department is instructed to keep the investment down. I have not heard any other reason given for not preparing freight.

74. Claims against the railroads for excessive freight, damage to cement in transit, delayed deliveries, et cetera, are handled by our Company and not by the consignee. In the few cases where the problem has arisen, our Company has assumed responsibility for damage in transit where recovery against the carrier has been delayed or unsuccessful.

75. Except during the Code period and for a period following, the Company has not used a form of specific sales order or contract with dealers, contractors, or owners, other than the short form referred to above as Respondents' Exhibit 3444. If conditions in connection with the job for which the cement is purchased for use are such that special provisions are deemed necessary, appropriate provisions are provided to suit the specific problem.

76. Except during the Code period, the Company has had no fixed period, either 15 days or longer or shorter, within which delivery must be made on a current order. Neither has it had or enforced any rule that an order for delivery beyond 15 days must be for a specific job.
42490 Each case has depended on the circumstances existing at the time.

77. The Company has not had or enforced, except during the Code period, any rule that contracts for period requirements will be quoted or closed only within a limited time before the commencement of the period. Neither has it had or enforced, except during the Code period, any rule that contracts for period requirements must be limited to quarterly periods or periods of any length. Each case has depended upon circumstances existing at the time.

78. Compendium of Established Terms and Marketing Methods compiled by The Cement Institute or The Code of Ethics of The Cement Institute had not been called to my attention and I had not seen them before the commencement of this case. Neither the Compendium nor the

Code of Ethics has been in the Sales Department files. The Compendium was found in a file labeled The Cement Institute.

79. I have never heard of or seen any advertisements regarding the methods of marketing or pricing cement being published or circulated by our Company or any company operating in our marketing area. I have heard and participated in discussions among our executives and sales department men concerning the pricing systems in use in Southern California and in Arizona.

42491 80. Competition in price in the sale of cement has been active and intense in both Southern California and Arizona for many years. Since December 12, 1933, there have been ten changes in price list price in Los Angeles, and eight changes in Phoenix. The following table gives the gross destination price and the mill nets for each change:

	12/12/33	5/2/34	11/1/34	3/18/35	3/19/35	5/2/35	10/21/35	11/19/35	12/2/35	4/1/36*	10/12/36	12/10/37	10/19/38	11/9/38
Los Angeles														
Gross	2.50	2.50	2.41	2.21	2.11	2.00	2.15	2.45	2.32	2.32	2.32	2.40	2.26	2.10
Sacks	.40	.40	.40	.40	.40	.40	.40	x	.40	.40	.40	.40	.40	.40
Discount	.10	.10	.10	.10	.10	.10	.20	x	.20	.20	.20	.20	.20	.20
Freight	.285	.285	.19	.19	.19	.19	.19	x	.19	.152	.152	.152	.171	.171
Mill Net	1.715	1.715	1.72	1.52	1.42	1.31	1.36	x	1.53	1.568	1.568	1.648	1.489	1.329

	12/12/33	5/2/34	3/19/35	3/26/35	6/2/35	10/21/35	12/2/35	10/12/36	12/10/37	4/8/38	12/1/38	12/22/38	1/9/39	2/15/39
Phoenix														
Gross	3.38	3.38	3.18	3.18	2.97	3.12	3.32	3.32	3.40	3.50	3.39	3.39	3.39	3.19
Sacks	.40	.40	.40	.40	.40	.40	.40	.40	.40	.40	.40	.40	.40	.40
Discount	.10	.10	.10	.10	.10	.20*	.20	.20	.20	.20	.20	.20	.20	.20
Freight	1.159	1.159	1.159	1.159	1.197	1.197	1.197	1.197	1.197	1.292	1.292	1.292	1.292	1.292
Mill Net	1.721	1.721	1.521	1.521	1.273	1.323	1.523	1.523	1.603	1.608	1.498	1.498	1.498	1.298

°Riverside published a new list raising price 30c 11/19/35. Colton did not follow.
*Price is after deducting special dealer's allowance.
The mill nets were different between dates of freight rate change and dates of price change, e.g., Phoenix April 18, '35 to June 2, '35, Jan. 1, '37 to Nov. 15, '37.

Testimony of W. E. Duque. 13057.

42493 81. Colton and Crestmore are located within about four miles of each other and equidistant from markets in Southern California, Arizona, and Nevada, and with equal commercial freight rates to practically all points. Victorville and Monolith, though located at greater distances from the Southern California markets, have enjoyed commercial rail freight rates greater than the Colton-Crestmore rates by only the following differentials:

Prior to mid 1934	1c per cwt.
Mid-1934-1939	2c " "
1939 to date	1c " "

82. I have searched our files and inquired of our executives regarding membership in said organizations. The Company is not and has not been a member of Association of Licensed Cement Manufacturers, Cement Manufacturers Protective Association or Association of American Portland Cement Manufacturers.

83. No officer or employee of the Company was a member of any committee of the Institute which considered or drafted a plan for dividing available business.

42494 84. The Company did not report or file prices with the Trade Practice Committee of the Institute. It did not report or file prices with any organization or committee before December 12, 1933, or after June 2, 1935. We received one or two inquiries from the Trade Practice Committee regarding changes in our prices, but did not file or report prices.

85. The Company did not subscribe for any statistics compiled by or in the name of Mr. Mallory or his organization before it became a member of The Cement Institute. It did not make any reports or statements to Mr. Mallory or his organization. It did not subscribe for any such statistics or make any reports or statements for use in such statistics after it became a member of the Institute.

86. The Company has not made reports or statements to The Cement Institute or to Mr. Mallory or his organization for the Mallory statistics. It has not made reports on the Mallory forms in evidence as Respondents' Exhibits 144 to 149. The Mallory statistics received from The Cement Institute were not filed or kept.

87. The difference in price between Colorado, California, and Yuma, Ariz., has not had any effect to lessen the Company's selling efforts at Yuma or Colorado. The

Company competes with the same cement manufacturers at Yuma and Colorado as it does in other California and Arizona communities, and meets with the same competing sales efforts of its competitors as at other towns.

42495. The Company has never sold cement to a purchaser for delivery at Colorado for re-sale or re-delivery across the river or otherwise than for a specific job. The Company has extended to Yuma dealers the privilege of buying cement for delivery to users at Colorado at Colorado prices. Yuma is a desert town with a population (1930 census) of 4892, the county seat of Yuma County which is a desert county except for the irrigated section south of the City of Yuma. Colorado is not a settlement or market center, has no stores or dealers except highway stands. There are no settlements, no agricultural, mining or other developments in the neighborhood. The closest towns are Calexico and Holtville in the Imperial Valley, each 55 miles distant by highway, and Niland on the railroad, 65 miles distant by rail. The entire country between is desert.

88. Prices at destination in California are influenced by the keen competition in the Los Angeles area. The inter-connection and overlapping of dealer territory extends the influence of Los Angeles prices to Riverside, San Bernardino and Redlands. Further inter-connection and overlapping extends the influence of metropolitan prices to Beaumont and Banning, on to Palm Springs, to Indio and Coachella, to Imperial Valley towns, and to Colorado on the California-Arizona border.

The most extensive Arizona market is at Phoenix and the Salt River Valley towns. The blanket

42496. freight rates over most of western Arizona carry the influence of Phoenix prices to the area covered by the blanket rates. The uncertainties of the Robinson-Patman Act carry the influence of Phoenix prices to Yuma. Competitive conditions at Los Angeles and at Phoenix are not the same; no one of the competing companies has any freight or location advantages at Phoenix, the volume of business is small, a company can lose all of it and not be seriously hurt. The breaking point must be somewhere. But for the Robinson-Patman Act, it might well be in the desert wastes of Yuma. Since there is no competition between Yuma and Colorado, it can better be at the State line.

88. Blythe, Calif., is the principal town and market

center of the Palo Verde irrigated area, is at the end of a branch railroad which takes off from the Santa Fe branch to Phoenix. The population of the entire township (1930) was 3026 (1986 whites). The closest settlement on the Arizona side of the river is Wickenburg (township population 891 (751 whites)), about 120 miles east by highway. Earp, California, is on the Santa Fe branch to Phoenix. It is only a railroad watering and maintenance station. It is 72 miles north of Blythe by highway. Parker, on the Arizona side of the river, is an Indian Reservation settlement. There is no building material dealer at Parker, and no real market center. The surrounding country is unpopulated desert. The closest settlement is Wickenburg,
42497 about 120 miles east by Santa Fe. The Company competes with the same cement manufacturers at Blythe and Earp, and at Parker and Wickenburg, as it does in other California and Arizona towns. It makes the same sales effort and meets with the same competing sales efforts of its competitors as at other towns. The Company has never sold cement to a purchaser for delivery at Earp or at Parker for re-sale or re-delivery across the river or otherwise than for a specific job.

90. Needles, Calif., is a town of 3,144 population. It is a railroad division point. The surrounding country is unpopulated desert. Beal, Calif., is about 10 miles south of Needles at a narrow point of the river. Topock, Ariz., is across the Colorado River from Beal. There is no settlement on either the California or the Arizona side of the river, and no commerce or competition between Needles or Beal and Topock. The nearest community on the Arizona side is Kingman, about 60 miles east of Topock. The intervening country is desert. The Company competes with the same cement manufacturers at Needles and Beal and Topock and Kingman as it does in the other California and Arizona towns. It makes the same sales effort and meets with the same competing sales efforts of its competitors as at the other towns. The Company has never sold cement to a purchaser for delivery at Needles or Beal, or at Topock for re-sale or re-delivery across the river, or otherwise than for a specific job.

42498 91. Calada, Calif., and Roach, Nev., are desert sidings on the Union Pacific Railroad. Neither is a settlement, and there is no commerce in cement conducted at either point. The nearest settlement in Nevada is Las

Vegas, population 5,165, which is about 45 miles northeast of the State line. The nearest California settlement is Barstow, population 2,000, which is about 140 miles to the southwest. The country for miles around is desert.

92. Scranton, Calif., and Leland, Nev., are desert sidings on the Tonopah and Tidewater Railroad in an even more remote desert section. The railroad has been abandoned.

93. The Company has not sold any cement in the past 10 years for delivery at any point in Nevada between the California State line and Las Vegas, or north of the State line at Scranton, except one sale to the United States, 1,250 barrels, on invitation August 6, 1935, for Reno and neighboring points.

94. The Arizona price lists of the Company have been issued in attempts to state the prices quoted in the field by competitors. For the western part of the State, where Colton has had a freight rate equal to or lower than El Paso, the prices are well known. The destination points are numerous, and the Company has a regular dealer at all market centers so that changes in price are known. In the eastern part of the State where El Paso has the rate advantage, the Company is represented by a dealer
42499 only at Bisbee-Lowel, Holbrook and Nogales. It has no salesmen who cover this territory It has no opportunity to pick up price quotations in the field. The Company does not endeavor to keep up a table of freight rates from El Paso to eastern Arizona points at which it has no dealer account. The Company's price lists are therefore written to state the prices which the best information available indicates Southwestern is quoting in the eastern territory.

Southwestern issued a price list under date of December 10, 1937, and the Colton price list met the Southwestern Prices. Effective March 28, 1937, freight rates were increased in the blanket rate territory from .315 per hundredweight, 1.197 per barrel, to .34 per hundredweight, 1.292 per barrel; or an increase of .095 per barrel. To meet this increase, Riverside issued a letter to the trade, dated March 31, 1938, announcing a general 10 cents per barrel increase in price, and Southwestern issued a letter to the trade dated April 5, 1938, notifying that effective April 8, 1938, prices would be raised 10 cents per barrel. Colton met those price raises. At points where the freight in-

crease was in the range of 10 cents per barrel, the mill net of December, 1937, was not affected. At the Colton dealer towns the rate increases were Bisbee-Lowell, 1.406 to 1.520; Holbrook, from 1.387 to 1.482; Nogales, from 1.273 to 1.368. The increases at Globe were 1.539 to 1.634; 42500 at Arntz, 1.539 to 1.634.

95. The more populous portion of Southern California is separated from Nevada and Arizona by mountain ranges and wide stretches of desert. The Sierra-Nevada range swings southeast through eastern California, turns to the south and west, and joins with the Tehachapi range, which separates the San Joaquin Valley from Southern California. The Tehachapis in turn connect with the Coast range which swings northwest along the coast. A range of mountains swings easterly from the coast range south of Ventura, merging with the southerly portion of the Tehachapis and merging with the Sierra Madre and San Bernardino ranges which run easterly north of Los Angeles and San Bernardino and southerly from San Bernardino.

The coast range extends also from the territory south of the Los Angeles coastal plain to the Mexican border. The population and market centers of Southern California are located in the coastal plains and valleys on the westerly slopes of the mountains south of the Tehachapis. To the east of these mountains is desert extending from 100 to 200 miles to the eastern border of the State. The desert country is very sparsely settled, has very few and very limited markets for cement. The markets have consisted almost entirely of public highway work, dam construction, and canal and water system construction.

The Company competes with the same cement man-
42501 ufacturers in Arizona and in its very small Nevada business as it does in California, makes a substantial sales effort in Arizona, and meets with substantially the same competing sales efforts of its competitors in Arizona as it does in the coastal portion of Southern California. The influence of coastal prices is carried to some degree to the California desert points because the capital invested in the desert developments in California has its source and is controlled in the coastal area. Because of the wide separation between market centers and dealer points in eastern California, western Arizona and southern Nevada, there is no opportunity for competition be-

tween dealers at California points and dealers at Arizona and Nevada points. The Company has not sold cement to a purchaser for delivery at a California point for re-sale or re-delivery in Arizona or Nevada, and has not sold cement to a purchaser for delivery at an Arizona or Nevada point for re-sale or re-delivery in California.

In central and eastern Arizona, the El Paso mill of Southwestern and the Portland, Colorado, mill of Ideal compete for business. In Las Vegas and points north in Nevada, the Utah mills compete for business.

42505 JAMES A. BLAIR, was thereupon called as a witness for the Respondents, and, having been first duly sworn, testified as follows:

Cross-Examination by Mr. Wooden.

42506 Q. Mr. Blair, paragraphs 1 to 4, inclusive, of your stipulated testimony, describe your connection with the company and experience there and the nature of your duties and the nature of your knowledge about the company's affairs.

A. Yes.

Q. I just want to follow that a little bit further.

To what extent, if any, have you had anything to do with determining the sales policies of the company?

A. Well, I consult with the management at times, offer them suggestions.

Q. But the responsibility of making the decision is not for you; is that correct?

A. On some things I take the responsibility.

Q. Can you give us an idea of what sort of things you refer to?

A. Well, salesmen come in, want to know if they can do thus and so, and I will say "yes":

Q. And sometimes you will say "no"?

A. Yes.

Q. Then, to some extent, you do exercise a supervision, have exercised a supervision over the sales force of the company?

A. I would say a little, yes.

Q. But in line with the general policy of the company as

you discussed it and received it and understood it from the higher officials of the company; is that correct?

A. Yes.

42507 Q. Now, will you refer to paragraph numbered 11 of your stipulated testimony? Can you tell me whether the figures that you have set forth in that paragraph are based on tonnage or barrelage or on dollars and cents?

A. You mean on this percentage table here, you mean?

Trial Examiner Norwood: A little louder, please.

Q. Yes, the percentage of interstate sales to total sales.

A. Well, I took the actual number of barrels that we shipped during those periods and figured them against the total business for those years.

Q. The total barrelage?

A. The total barrelage, yes.

Q. It in no way relates or shows dollars and cents?

A. No, not at all.

Q. Now, will you refer to paragraph numbered 15. This reference that you make there to maintaining blanket prices for trade areas in Southern California. Will you describe the nature and origin of those blanket price areas that you refer to?

A. Well, all the prices from Colton and San Bernardino, as far west as the ocean, are all in the same blanket price zone, blanket price area.

Q. The same delivered price at every destination in that area?

A. Practically so, yes.

42508 Q. But in that area, however, there are differences in freight rates?

A. Yes, there are.

Q. Have you ever heard those blanket price areas referred to as zones?

A. Oh, you see, they talk about zones, but we talk about area, trade area.

Q. Well, you heard them talk about, in your company, as zones?

A. I have heard people talk about them as zones.

Q. And have you heard zones referred to there in any source or any circles outside of your company?

A. I do not think I have, no.

Q. Among dealers?

A. Dealers do not talk with zones. What they are mostly interested in is price and trade conditions, I would say.

Q. Why so; if they are zones they are price zones, aren't they?

A. I do not quite get you there. The same price applies to a particular area, that is what I mean; the same price applies to a particular area.

Q. You say dealers are not interested in zones, but they are interested in price; that is why I ask you, well, if these are zones they are prices zones, aren't they?

A. Well, I think I have answered that, Mr. Wooden.

42509 Q. Can you do it again for my benefit, please?

A. I say dealers are interested in prices in their particular territory; that is what I mean to say.

Q. Haven't you seen maps of that Southern California area, that establishes these blanket areas as zones?

A. I think I have not seen them recently.

Q. Have you seen the Riverside map?

A. Yes.

Q. Showing these zones?

A. Yes.

Q. What I am getting at, is when you speak of this blanket price area, you are speaking of the same thing that the Riverside map referred to as zones, aren't you?

42510 A. Well, it is the same territory as covered by those maps.

By Mr. Wooden:

Q. Well, don't you know whether you are referring to the same thing as the zones that are shown on those 42511 maps when you talk about the blanket price area?

A. Well, there are no zones any more.

Q. They are blanket price areas?

A. There is just one area, that is embraced in the one price.

Q. Only one zone, in other words?

A. Well, just one area, or one, whatever you want to call it, one territory.

Q. Well, do you disagree with calling that one blanket price area a zone?

A. I do not think it makes a great deal of difference.

Q. Do you think it could be called that without doing violence to language?

A. Somebody might call it that. I might call it something else.

Q. You have heard it called that in the trade?

A. Yes.

Q. Now, outside of that blanket price area in Southern California, what is the method of quoting prices?

A. Well, our prices—our quotations are made on the prices that we find in those outside areas.

Q. Isn't there, outside of those blanket price areas in California, isn't the destination price that you find in some portions of that area the equivalent of some base price plus freight?

A. In some cases it might be so. You will have to—

42512 Q. Well, can you tell me in what area or what part of California that would be the case?

A. I would say only on points far off the railroad, that might be the only case, I think.

42514 Q. You are selling in the San Joaquin Valley?

A. We sell very little there.

Q. You sell some?

A. Yes.

Q. That is outside of this blanket price area. Now, take San Joaquin Valley where you sell, aren't the destination prices the equivalent of some mill base plus freight?

A. No. We simply sell in competition with the mills in that part of the country, whatever the price is.

Q. Did you ever break down or analyze the prices you found there to find out how they were built up?

A. Do you mean from the northern mills, or what?

Q. Yes.

A. No, we never did.

Q. You never analyzed the price, say, at Bakers Field, or along in there, Fresno, or any of those points, to see whether it reflected some mill base?

A. Do you mean a mill base up north or down south?

Q. Any mill base.

A. No. If we made a sale there we might analyze it and see what return we got.

Q. In other words, you do not know whether the prices

outside of this blanket area in Southern California,
42515 you do not know how they are built up?

A. I do not know how they are built up.

Q. You do not know whether they reflect some base price at a mill, plus freight?

A. No, I do not.

42516 Washington, D. C.
Friday, June 28, 1940.

42525 Mr. Wooden: Just for Your Honor's information, Counsel for the Commission have never contended for a moment that the basing-point system applied in full measure in Southern California and in Arizona, but that it was a combination of some territories on a zone price system and in other territories on a basing-point basis.

42526 Mr. Wooden: I do not think it is within the province of Counsel for the Federal Trade Commission to tell what the proper basis is on which purchasing officers of the Government shall buy their cement and make awards. I have said, and it is obvious to anybody,
42527 that any purchaser who wants to use a thing at a given place is naturally going to figure what it is going to cost him when he get it to that place, but that does not mean that he wants a delivered price.

Trial Examiner Norwood: I think it has been shown that the Government did make these awards as you have pointed out, shown there in the parts of the record you have cited, that the Government did make the awards on the basis of the cost to the Government at the point of use.

42539 JAMES A. BLAIR, thereupon resumed the stand and testified further as follows:

Cross-Examination (Resumed) by Mr. Wooden.

Q. Referring to the inquiry, as I said, the paragraph numbered 16 of your stipulated testimony, are the blanket areas referred to there, what they were as shown by Commission's Exhibit 1297, which is in evidence as a zone map of the Riverside Cement Company, April, 1936?

42531 A. The blanket area extends to Colton, covers this entire area—

Q. Covered by the map; covered by this map?

Mr. Davis: The witness refers to all of the numbered—

A. All of these numbers there.

Mr. Davis: Areas.

By Mr. Wooden:

Q. All of the numbered areas or zones?

A. Zones or areas.

Mr. Davis: On the lower half of the map.

A. There might be a small station out here, I do not know whether it takes in that area or not. I think there might be a small section in the corner.

Q. There are some numbers up here?

Mr. Davis: The witness refers to some numbers, 1, 2, 5, Newhall, which is not on the map; however, it is all south of the tunnel.

A. This is all one area from Colton.

Q. What about this area east, is that coastal area?

A. Off San Diego?

Q. San Diego northwards?

A. You might say that this area here is in one zone, and this area here is in another zone.

Q. When you say "this area here," you mean

42532 Nos. 27, 35, 33, 34, 35, and 36?

A. 36, 34, and 33, and I think 35; without looking at these destinations, I could not tell whether this whole section is in one-price area.

Q. Now, I understand that the boundaries of the various areas have changed from time to time.

A. That is right.

Q. And this exhibit, Commission's Exhibit 1297, represents the areas of the particular—another represents the boundaries of the particular areas; is that correct?

A. Let me get your question again.

Q. Well, this is a map of April, 1936.

A. Yes.

Q. You have told us the boundaries have changed from time to time.

A. Well, I think the San Clemente has been changed, one area to another, different times on occasion.

Q. That may be true with other towns in those areas,

that they might have been shifted into other areas or zones?

A. Well, when areas were first extended, this here was a trade area.

Q. You are now talking about Nos. 21, 23, 24, 25, and 26, when you say that?

A. This section here was in one-price area when the trade area pricing was put in, and I think this section here was in another.

42533 Mr. Davis: The witness indicates the highway spoken of, referred to by Mr. Wooden, in his first reference; he is now referring to 18, 19.

A. And they changed the—I think most of it has been put in the one area, one price area instead of having several price areas.

By Mr. Wooden:

Q. And you had in your company offices copies of this Riverside zone map?

A. We have had one of several.

Q. Have you had any subsequent to April, 1936?

A. I don't think so. I don't know of any that has been issued since that time.

Q. What use did you make of them in your office?

A. We had very little use for them.

Q. Well, what was that use which you say was very little?

A. Well, our salesmen would pick them up, just the same, as a matter of information as to what was going on in the market, and bring them into the office, and we would naturally keep them.

Q. Picked them up from whom?

A. From dealers.

Q. They were circulated among the dealers?

A. Yes.

42534 Q. Did you find occasion to refer to them as to what particular area carried a particular delivered price?

A. No, I do not think I had occasion to do that.

Q. You knew the boundaries of these various trade areas, didn't you?

A. I knew the general description of them, yes.

Q. Well, you quoted them—made your prices in those various blanket areas and zones in accordance with the boundaries shown in those zones, didn't you?

Mr. Davis: Now, if the Court please, I am going to object to this line of examination. The statements made in questions 15 and 16 are to the point that the price method used in Southern California in intrastate business of the Respondent are not made on a basing-point system as described in paragraph 5 of the complaint, or substantially that system.

The statement is made purely for the purpose of pointing out that the basing-point system is not used in the California business. We haven't gone into the details of the method of fixing prices within those zones except to show that it is not done on the basis of a mill net plus freight.

42536 Trial Examiner Norwood: I think in an investigation of this kind, we will have to let in those particulars.

Mr. Davis: Your Honor apparently does not get my point. This case charges a conspiracy of having a nation-wide system—well, not necessarily nation-wide—at least a conspiracy to restrain interstate commerce. Now, matters of contended or alleged restraint in intrastate commerce has no place in the proof in this case. There is only one theory upon which that might exist, and that is that the intrastate system has an effect to restrain, possibly, interstate commerce by a competitor with a mill in another State. For example, it might be contended that conditions in California would keep El Paso out of California. Now, there is no proof, however, of any condition which would make it at all possible for El Paso, for Colorado—I mean Portland, Colo., or for the Salt Lake City plants to come to California. As a matter of fact, we have shown the freight rates from those towns in question No. 13, which is the only proof that is in on that point, as I recall, which shows that it is absolutely impossible for any out-of-the-State mill to come into California business regardless of conditions in California.

Trial Examiner Norwood: I think he may bring out the particulars here.

42537 The objection is overruled.

A. We made our quotations on the basis of prices that we found were being quoted at destinations in those zones, yes.

By Mr. Wooden:

Q. And you generally observe the same boundaries of zones that your competitors did in that area?

A. We would have to. We could not get a higher price for cement if we would try than they were getting.

Q. And you did not attempt to make any lower price?

A. No. We are in the business for profit.

Q. And you did not attempt to quote a price, a lower price, applying in one zone over to the edge of the next zone where a higher price was in effect?

A. I did not quite hear you there, or understand you.

Trial Examiner Norwood: Read the question.

(Question read.)

Q. Over the edge, instead of over to the edge; over the edge.

42538 A. If a town was located on our price list,—that is, the price list we made.

Q. And if you had a lower price than your price list in a town at the edge of one zone, you did not make that low price extend over into the next town in a higher-priced zone adjoining?

A. If a town in higher-priced zone was on our price list at a higher price, we quoted the price shown in our price list.

By Mr. Wooden:

Q. In other words, you observed the boundaries of these zones and the respective prices applying in each zone?

42539 A. Well, I think I have answered that before. If the town in any zone is on our price lists, whether at a higher or lower price, that is the price we quote.

By Mr. Wooden:

Q. And your price list was made up in a way which corresponded to the boundaries of these zones?

A. That might be a coincidence, yes.

Q. Isn't it a fact?

A. I believe it is a fact.

Q. You say in paragraph numbered 16 that the boundaries of the trade areas have been changed from time to time to meet competitive conditions. Has the California Portland Cement Company ever initiated a change in the boundaries of these trade areas?

42540 A. It might have.

Q. Well, can't you tell me whether it did or did not?

A. I cannot tell you definitely right now. I believe that

our policy has been instrumental in changing some of those zones.

Q. What do you mean by "instrumental"? I am asking you whether you took the initiative and made any change in the boundary lines of these zones?

A. We might have quoted a town in the higher-priced zone at a lower price, which would possibly establish a price at that point, and that would naturally change any zones that were on that map.

Q. Now, you are saying what you might have done. Can't you tell me what you did do?

A. I cannot tell you definite instances, no.

Q. You do not know whether you did or not?

A. You are asking if it would be possible—

Q. No. You are answering that it would be possible. I am asking you if you did.

A. Well, I cannot tell on that definitely, no.

Q. You have no recollection whether or not the California Portland Cement Company ever took the initiative in changing the boundary lines?

A. No, I honestly cannot tell you that.

Q. Well, when you say that they have been changed from time to time to meet competitive conditions, 42541 don't you mean, where you say that in paragraph 46, don't you mean that you followed whatever change in the boundaries were made by your competitors?

A. We would have to if we wanted to sell in those territories.

Q. Even regardless of which way the price moved, you would have to do it?

A. No, we would not have to. I am referring to prices going down lower, we meet those competitive conditions.

Q. Well, weren't there times when zone boundaries were changed in such a way as to put the price up in some towns?

A. I do not think the tendency has been that way. It has always been to flatten out.

Q. Well, hasn't there been some cases—

A. Well, towards the east, yes. They would be flattened out a little.

Q. Well, when you say in paragraph numbered 16 that these boundaries have been changed from time to time to meet competitive conditions, you mean that you had followed along or at least kept your prices and the bounda-

ries of the zones in which they were applicable in line with your competitors, don't you?

A. We meet competition if we have to; that is—

Q. Can't you give me an answer to the question?

42542 Trial Examiner Norwood: Read the question.

(Question read.)

A. We make our prices competitive, and we make them to fit the trade conditions; it is a combination of both, you might say.

By Mr. Wooden:

Q. Well, when you say you make them competitive, you mean making them the same, do you not?

A. Well, the competition between the two areas—

Q. I am not talking about areas now. I am talking about prices within a given blanket area, within that area you try to make your prices the same as those of your competitor, do you?

A. Well, if there is a change in price and it is upwards, and it smooths out some of those trade areas, we believe it is all right, why, we will rise on that price.

Q. Well, hasn't it been your attempt and policy to keep your price base within those various zones in line with your competitors?

A. Well, as I say, we cannot get more.

Trial Examiner Norwood: Well, has that been the net result of your activities, regardless of the objectives?

The Witness: I would say that is the net result.

By Mr. Wooden:

Q. Now, passing on to paragraph numbered 17,

42543 you say that your traffic department keeps a tabulation of freight rates from your Colton mills and the mills and shipping points of your competitors to many points to which you ship for use in bidding on Government invitations. Why do you keep a tabulation of freight rates from the shipping points of your competitors?

A. Well, we want to know the land-grant rates that the other mills enjoy to the destination.

Q. Well, that was not limited to land-grant rates, was it; you kept all rates from your competitors' mills?

A. We did for a time, but that practice, I think, was discontinued for a number of years.

Q. Then, this statement in paragraph 17 is really confined to—

A. It is confined to Government land-grant rates; that was my reading of it.

Q. And why did you keep tabulations of Government land-grant rates from your competitors' mills?

A. Well, the Government would have an advantage in shipping from that particular mill if that mill had the lowest land-grant rate.

Q. Well, you did it in order that you might quote so as to meet the Government's destination cost?

A. From that mill.

Q. From other mills?

42544 A. Yes.

Q. If you had a policy of quoting consistently on an f. o. b. mill basis, you would not have to have that information about the land grant rates from your competitors' mills, would you?

A. Yes, we would.

Q. Why?

A. We quote on a mill base now, and we still keep the same information.

Q. Do you mean to say that it is necessary to know what destination is involved before you quote f. o. b. mill?

A. If we want to get the business, we think we have to know that.

Q. Now, referring to the table of rates and mill nets in your paragraph numbered 17, and the statement to the effect that freight rates from Colton to all points shown are as low or lower than those from any other mill in Southern California, and there are nine points shown, you do not mean to say, do you, that freight rates from Colton to all other points in Southern California are as low or lower than those from any other Southern California mill; do you?

The Witness: Give me that question again.

Trial Examiner Norwood: Read it.

(Question read.)

A. We have, generally speaking, lower rates from Colton to the southern part of Southern California.

42545 By Mr. Wooden:

Q. Lower than any other mill?

A. Well, Crestmore would be the same, but when you go north, why, then, the advantage would be with Victorville and Monolith.

Q. In other words, there are quite a number of points

not shown in this paragraph numbered 17, where you are at a disadvantage in freight rates compared to your competitors?

A. I think we have an extra list, isn't that right, of those points?

Q. Well, can you answer the question?

The Witness: Give me the question again.

Trial Examiner Norwood: Read it.

(Question read.)

A. I say in the northern part of the State.

By Mr. Wooden:

Q. Well, what—

Trial Examiner Norwood: Aside from that, are there any other?

By Mr. Wooden:

Q. What distinction between northern and southern did you have in mind there?

A. Well, when you get up there closer to Victorville and Monolith they have an advantage in freight rates going north.

Q. And everywhere north?

42546 A. I think so.

Q. And on points south you have the advantage, is that right, south?

A. I would say we have the advantage.

Q. Now, referring to paragraph numbered 17 of your stipulated testimony regarding distribution of your price lists, have you passed out or sent your price lists to any of your competitors?

A. Our price lists at present are made up for the sales force and office force only.

Q. I am asking you what has been the practice.

A. During the period of the Code, I believe we exchanged prices then, price lists then, but not since that time.

Q. Well, fix the time, when you talk about the period of the Code.

A. Well, I will say in 1935, there would be no exchange of prices since 1935.

Q. Do you mean to say that—

A. We do not distribute them; do not distribute our price lists.

Q. Do you mean the latter part of 1935, or what part of 1935?

A. Well, I cannot say for sure whether there was a price change of June 2d, whether we distributed at that time or not; I cannot say for sure. But I would say after that period we did not.

42547 Q. Well, I am not content with a period. I want a more exact fixing of time.

Mr. Davis: He fixed June 2d, if the Court please.

A. I fixed June 2d.

Mr. Davis: He said after June 2d they did not distribute, and he did not know whether they distributed the June 2d list or not. That is about as definite as you can be. I object to the question on the grounds that it has already been asked and answered.

Mr. Wooden: If that is his testimony, all right.

By Mr. Wooden:

Q. Prior to the Code, you exchanged price lists with competitors?

A. No, we did not, because we did not issue price lists then. The same practice we do now was in effect then. We made up a price list for our own salesmen.

Q. You received, prior to the Code, the Riverside list?

A. Prior to the Code?

Q. Yes.

A. We received them; we picked them up from our dealers at different times.

Q. Didn't you receive them direct from the Riverside Company prior to the Code?

A. I think we did.

Q. And didn't you receive direct from the River-

42548 side Company zone maps?

A. We might have gone over there after them and gotten them. I am not sure of that, but I do know that we picked them up in the hands of dealers, because the dealers did not have any further use for them.

Q. You think you may have gotten them direct, also?

A. We might have, yes.

Q. Do I understand that during this Code period you were exchanging your price lists with your competitors, but not distributing your price lists to your customers?

A. During the Code period the customer could have a price list if he wanted. I believe we mailed them to our customers during the Code period when we printed them.

Q. Prior to the Code period did you have price lists at all?

A. We had small price lists for the use of our salesmen.

Q. And they were not distributed to the trade, then?

A. No, they were not.

Q. In this paragraph numbered 18, you say that in most cases the lists were prepared after price lists of a competitor "had come to our attention." You meant by that, didn't you, that you took the price list of a competitor that came to your attention and made your list conform to it?

A. We checked it out and made our list conform to that.

Q. What percentage of your sales have been made at figures other than the figures shown in your price lists?

42549 A. Well, that would depend on periods,—it would vary from year to year.

Q. All right. You differentiate the various periods.

A. Well, you are referring to Government quotations, and so forth, or what type of business?

Q. No. I am talking about your price lists and the customers to which such price lists apply.

A. Well, when prices were firm, the percentage would be small, perhaps two or three percent, and when you had an unstable market, it would be higher.

Q. Well, now, tell us some of the periods when the prices were stable and when they were not?

A. Well, I think 1929 was a period when they were very unstable; I think that one sticks out very much.

Q. All right. Then come down since then.

A. Well, over a period of years you have periods in between—in different parts of the year—where the prices would be unstable, and then they would be firm again.

Q. And how about 19—during the Code period, were they quite stable?

A. Yes, sir.

Mr. Davis: What was that? I did not get that.

The Witness: Were they stable during the Code period, —prices.

By Mr. Wooden:

42550 Q. Weren't they quite stable during 1936?

A. I cannot put my hand on any particular year. I have generalized the thing for you as best I can.

Q. How about 1937?

A. Well, the same generalization would apply there.

Q. Now, when you divide your business into that that is sold to dealers from that sold to all other customers, isn't the percentage of adherence to your list of prices higher in the case of a dealer?

A. The prices with dealers are more stable, yes.

Q. Taking a dealer trade alone, your percentage of adherence to your list prices would be what?

A. Well, that would depend on the market conditions just the same as the other thing.

Q. Yes.

A. If you had an unstable market you had to support your dealer.

Q. All that I want to get, a percent against that estimate of what—what was it, two or three percent, you gave a while ago, on your trade as a whole?

A. That is what I said.

Q. Take your dealer trade alone, your percentage of adherence would be greater?

A. Well, you would have 100 percent adherence in that period; when I say if prices were 2 percent, you
42551 would have a hundred percent dealer adherence.

Q. Now, referring to paragraph numbered 20 of your stipulated testimony. What was the difference in the method used for Arizona's price quotations prior to this period that you describe here?

A. The practice of issuing a price list in Arizona is to find out what our competitors are selling at, and print a list on the same basis.

Q. Well, was that always the case? You talk about here a period of more than 10 years. You have been there since 1921, I believe?

A. Yes.

Q. Was there any difference in the earlier years of your connection with the company?

A. I do not think there was any difference at that time.

Q. You also state in that same paragraph that the prices in your Arizona price list for the past 10 years have been fixed by following the prices which you had found quoted by one or more of your competitors. What competitors' lists in Arizona have you followed?

A. I do not know—I do not know of any list applicable to Arizona other than those that have been issued at various times by Riverside and Southwestern.

Q. Did Southwestern issue any Arizona lists for western Arizona?

42552 A. I do not recall western Arizona; I believe they have. I know that during the Code I believe they filed a western price.

Q. Have you followed any price list in eastern Arizona issued by the El Paso mill?

A. I do not know that I have seen an El Paso mill price list.

Q. Well, does that mean that you have not followed a price list of the El Paso mill in eastern Arizona?

A. We do not do much business over there, and we do not solicit the business over there in eastern Arizona.

Q. Can you tell me whether that means that you have not followed the El Paso mill's price list in eastern Arizona?

A. If we wanted to take business down there, why, we would meet the price established by the El Paso mill; if we wanted to get it, we would have to.

Q. Then, again, I ask you whether that means that you have followed the price list of the El Paso mill in eastern Arizona?

42553 A. Well, I will say to answer that, I do not know.

By Mr. Wooden:

Q. You may have, but you do not know?

A. I do not know.

Q. At any rate, you did try to make your prices in eastern Arizona competitive with the El Paso mill?

A. I say that we would have to make them competitive if we wanted to take any business down there.

Q. And by that, you mean make them as low as the El Paso mill?

A. Yes, exactly.

Q. You did not try to make them any lower?

A. They were possibly too low, as it were, from our standpoint.

Q. So you did not try to make them any lower?

A. No.

Q. Now, referring to paragraph 21 of the stipulated testimony, what destination points in Arizona did you refer to there as constituting the principal market for your cement in Arizona?

A. In 1921?

Q. Yes.

42554 Mr. Davis: Question 21.

Mr. Wooden: Paragraph 21.

Mr. Davis? Not 1921.

A. The principal destinations in Arizona, are around Phoenix, that is the Phoenix area.

By Mr. Wooden:

Q. Is it your testimony, then, that at Phoenix the freight rates from Colton have been the same as the freight rate from El Paso?

A. Yes, they are.

Q. That has always been the case?

A. That has always been the case, so far as I remember.

Q. Now, is it your testimony that at all points in western Arizona the freight from El Paso is the same as that from Colton?

A. No, not quite. Western Arizona?

Q. You have quite a number of points in western Arizona, have you not, where Colton has a freight advantage over El Paso?

A. Yes, one or two.

Q. I said quite a number; now you say one or two.

A. Well, there are not a great many towns in western Arizona.

42555 Q. Well, do you mean literally—name those one or two, then.

A. Well, Yuma.

Q. Name the others—name all you can.

A. I think Maricopa, I think there is a difference there.

Q. In your favor?

A. In our favor. Welton would be another place in our favor. These are just points on the railroad.

Q. Would you say that west of Phoenix that you have the freight advantage over El Paso?

A. I think it extends further west than Phoenix.

Q. What does?

A. The breaking point where we have the advantage. We have a map of it that we can see where those points break.

Q. I wish you would tell us.

A. If I can refer to the map there, I will.

Q. Name them, as many points as you can.

(The witness leaves the witness chair and obtains a map and then returns.)

A. Well, the equal rates extend west to Gila Bend.

Q. Name as many towns, specifically, west of Phoenix.

A. Well, there is Maricopa.

Q. Where you say you have a freight advantage.

A. You said where they were even, didn't you?

Q. No, I said name as many towns west of Phoenix where you have the freight advantage over El Paso.

42556 I think that is what I asked you. Naming where they are equal is all right as a partial answer, but I want the other point covered also.

A. Well, we have only covered this point here at Yuma; there is a town down here where we have the advantage.

Q. Do you have the freight advantage at Mesa?

A. At Mesa, we do not. They are all equal there.

Q. Do you have the freight advantage Kingman?

A. We have a freight advantage here. The rates break at Ashfork, I believe, right there. There we come in, even to Prescott.

Q. Even with El Paso?

A. Yes.

Q. And Ashfork even?

A. Even there, and I think they break right here; here is where the disadvantage here.

Mr. Davis: The witness points to Seligman.

Q. And Kingman?

A. And Kingman, we have the advantage there.

Q. And Topock?

A. Topock.

Q. And is it your testimony that from Ashfork down to Prescott and through Mesa and Phoenix—

A. This section here.

Q. —from there out on those points you are on an equality with El Paso?

42557 A. El Paso, yes.

Q. Is it your testimony that all points east of that breaking line, Ashfork, Prescott, Mesa, and Phoenix, that your competition has the advantage?

Mr. Davis: The witness also stated Gila Bend, which is to the west.

The Witness: When you come through to Winslow—we are on an equal rate with El Paso over to Winslow.

By Mr. Wooden:

Q. And from Winslow east El Paso has the advantage?

A. From Winslow east El Paso has the advantage.

Mr. Davis: That is at the first town noted on the map.

The Witness: East of Holbrook.

By Mr. Wooden:

Q. When you get down on the list, down on the line, the railroad line that runs through Phoenix, how far east do you go on an equality with El Paso?

A. Well, you go to Superior on an equal basis, 35.

Q. East of these El Paso has the advantage?

A. And east of Superior, why, El Paso has the advantage. The first breaking point there is Miami.

Q. How about the line that has Casa Grande and Tucson on it?

A. Well, Casa Grande, we are equal with Colton and El Paso; and Tucson, we are equal with Colton and El Paso.

42558 Q. Where does the advantage of El Paso begin?

A. At Benson is the first stop there.

Q. How about Nogales?

A. Nogales, we are at a disadvantage at Nogales. El Paso has an advantage there, because they come in this way.

Q. All right. I guess that suffices.

You have, do you not, different freight rates from your Colton mill to various points in western Arizona?

A. Different rates?

Q. Yes, to various points.

A. In western Arizona?

Q. Yes.

A. Yes.

Q. What is the range of freight from your mill to various western Arizona points?

A. Well, it ranges from 25 cents a hundred up, perhaps.

Q. You mean the difference between some points and others may be as much as 25 cents?

A. No; no, they start in at 25 cents and graduate up.

Q. All right; up to what?

A. The further over you may go—you get over, as I have shown on that map, over to 40 cents a hundred.

Mr. Davis: If the Court please, if I may make a suggestion, rather than speak in approximations, we have the details, the figures, and rather than make guesses I

42559 merely give that for Counsel's information if he really wants the real information.

Mr. Wooden: Well, I just wanted the ultimate facts there. An approximate correctness, for my purposes, I think is sufficient.

By Mr. Wooden:

Q. And your rate to Phoenix has been what?

A. Well, it ranged from 30½ to 31½, and then back to 30½, and up to the present time is 34, I believe.

Q. In the territory of western Arizona where you had a freight advantage over El Paso, what was the highest freight rate you can recall from Colton?

A. Well, at Yuma, you start possibly 25 cents, and as you go on, why, the rate graduates until you get into Phoenix, 30½, and you come into Phoenix on an equal basis with El Paso.

Q. And 30½ would be the highest freight in the territory where you have a freight advantage,—where you are on an equality with El Paso?

A. 30½ is the—well, let's get over here and see if I can get you clear on that question. We come into Phoenix on an equal basis with El Paso, 30½ and 30½, and Mesa 30½ nd 30½, Casa Grande, 30½, and go down to Superior, 35 and 35. When you come down to Miami, we have 41½ and they have 32.

Q. Do you want to tell us about Yuma?

A. Well, I do not know what the situation is be-42569 yond Yuma, but I assume that it is, Yuma 27 we have and probably 27, and El Paso's rate would be 36.

Mr. Davis: This map was apparently prepared during the 30½-cent period, which expired November, 1937. I think the record shows that.

The Witness: Well, it shows here when the changes were made, but the differential is substantially the same all the way through.

By Mr. Wooden:

Q. The relation of the rates remain the same; is that what you mean?

A. Yes.

Q. Then, as I understand it, your freight rate from Colton up to Phoenix, and north and south of Phoenix, range from, you might say, a minimum of 25 cents up to 30½; is that right?

Mr. Davis: But the witness corrected himself at 27, rather than 25.

A. We have a rate to Parker there 25, that is the point I had in mind, the 25-cent rate.

Q. Then, you did not intend to substitute except in the case of Yuma or Parker, 25 cents still?

A. Well, we were talking about generalities anyhow.

42561 Q. Mr. Blair, isn't it a fact that freight rates from some of your competitors in Southern California into Arizona are different from yours?

A. From our competitors, I think we go into Phoenix on the same rate, Colton, El Paso; Victorville and Monolith all reach Phoenix on the same rate.

Q. How about some other points? Aren't there some other points in western Arizona where freight rates from Colton are different from the rates from Victorville, Monolith, and Crestmore?

A. Well, take Casa Grande, the rates from Colton, El Paso, are the same, while the Victorville and Monolith rates are higher.

Q. Well, I am not talking about El Paso now, but your Southern California.

A. Well, I mentioned Victorville and Monolith were higher.

Q. Can you name the points on that map where Victorville and Monolith are higher than from Colton?

Mr. Davis: That is in western Arizona.

A. Yes, Casa Grande is one and Benson, Victor and Monolith are higher than Colton. They would also be higher at Patagonia.

42562 Q. Are those all western Arizona points?

A. Well, you are getting over to the center line, you might say, when you come over into that section.

Q. Go ahead.

A. That just about covers the highlights of it.

Q. You have a number of points in western Arizona to which your price list applies where you have the same destination price, have you not?

A. As our competitors?

Q. No, the same destination price at different destinations.

A. In western Arizona?

Q. Yes.

A. The same price at different destinations?

Q. Yes.

A. Yes. We would have the same price at Kingman and Seligman, Topock. I assume that that is correct there.

Q. Do you have the same price at Yuma as at Phoenix?
A. No.

Q. Do your have the same price at Yuma that you have at Gila Bend?
A. No.

Q. Do you have the same price at Yuma that you have at Ehrenberg?
Mr. Davis: There isn't any price at Ehrenburg.

Q. How about Parker?
42563 A. I would have to look at that. I do not think we would have the same price there, either.
Mr. Davis: You may get your list.
May I ask Mr. Wooden a question?
Mr. Wooden: Yes.
Mr. Davis: Mr. Wooden, you want a price list, I assume, which was in force while the rates shown on this map were in force?
Mr. Wooden: Yes.
Mr. Davis: Which would be time prior to November 17, 1937.
A. January 1, 1937; is that the period you want to talk about?
Mr. Davis: Yes.

By Mr. Wooden:

Q. That is all right.
A. Just name your point there; at Yuma you had a price of $2.98 in paper. We will talk about cement in paper bags because that is the way it is usually sold down there, or do you want to talk about something else?
Mr. Davis: If you want to, Mr. Wooden, obviate the necessity of possible mis-readings of price lists, I will be glad to stipulate with you that certain exhibits in evidence will show certain prices.

Mr. Wooden: Will you stipulate that certain
42564 exhibits in evidence show the same destination prices?
Mr. Davis: Oh, no generalities. If you want to stipulate that the points—I will be very glad to refer to such and stipulate to it, but I do not want to stipulate to generalities. I thought we would save time in that manner; also avoid the possibilities of errors and the necessity of redirect examination.

By Mr. Wooden:

Q. Let me ask you this general question: Isn't it a fact, Mr. Blair, that your mill has had the same destination prices in effect at some western Arizona destination, although the freight from your mill to those points was different?

Mr. Davis: What do you mean by western Arizona? May I ask a question, if the Court please, and obviate the possibility of objection.

Trial Examiner Norwood: Go ahead.

Mr. Davis: What does western Arizona mean? I assume it means that part of Arizona that is west of the common freight rate area?

Mr. Wooden: Well, he may fix the area.

The Witness: Well, I could not fix it without referring to the definite prices that are in our lists. We have all the lists, if you want to cover any particular period.

By Mr. Wooden:

42565 Q. Can you say what your destination price was at any given time on any of these western Arizona points?

A. By looking at these prices.

Q. All right.

A. Yes.

Q. Tell us what your destination price was at those points.

A. At what period now?

Q. Well, take the period 1937 or 1938, along in there.

Mr. Davis: May I, as long as the Counsel is giving the witness a chance, may I suggest that we take a period when the 30½ freight rates were in effect?

Mr. Wooden: Yes.

Mr. Davis: I suggest the period of the price rate in effect between January 1 and November 15, 1937.

The Witness: What list did you say there?

Mr. Davis: That would be the December 2 list of 1936. I am wrong; October 12, 1936.

The Witness: That is what I think. All right. Just ask the point there. At Phoenix, at that period, we had a price of $3.12 in paper sacks.

By Mr. Wooden:

Q. $3.32 in cloth?

A. $3.32 in cloth.

Q Let us take it in cloth all the way through.

42566 A. All right, $3.32 in cloth.

Q. All right. That was Phoenix. What was it at Mesa?

A. Mesa would be $3.32.

Q. What was it at Yuma?

A. $3.18 in cloth.

Q. What was it at Nogales?

A. Nogales would be $3.32.

Q. Now, take those two points, you have the same price of $3.32 in effect at Nogales and Phoenix, and at the same time you had a freight rate to Phoenix of 30½ and a freight rate to Nogales of 32½; isn't that right?

A. Yes.

Q. So your mill nets on Phoenix and Nogales business were different, weren't they?

A. The resultant figure is different, yes.

Q. Now, aren't there some other cases of the same sort that could be— What is your price to Kingman?

A. The price at Kingman, $3.32.

Q. What was it at Parker?

A. Parker was $3.11.

Q. Well, wherever you had a $3.32 price in effect, and the freight rate was different from your figures, the freight rate of your Nogales freight rate that you just testified to, you had a still different mill net on that business, didn't you?

A. Yes.

42567 Q. Then, what does this statement in paragraph 23 of your stipulated testimony mean, that at certain places your price for Arizona destinations were equal to a uniform mill net price plus freight from Colton to the respective destinations.

Mr. Davis: I assume the witness is reading the whole question. As read by Mr. Wooden, it is not entirely right.

A. At the time—

Trial Examiner Norwood: Read the whole paragraph?

Mr. Davis: May I offer a stipulation?

Trial Examiner Norwood: Yes.

Mr. Davis: I will stipulate that that is not correct, Mr. Wooden, if you are trying to prove that it is not. There is an error in omitting a word "such destinations"; that is destination points west of the El Paso preference line, as

it is very obvious that it is not correct as to the territory in which the El Paso rate is smaller than Colton.

Mr. Wooden: Well, I want to know to what extent it is correct in the western Arizona territory where El Paso is at a freight disadvantage?

Mr. Davis: Yes; that I would like to go into.

Mr. Wooden: I would say that I would accept the stipulation as far as eastern Arizona is concerned.

Mr. Davis: I thought possibly that was what you
42568 were trying to prove, and I thought we might save time.

A. Well, the mill net arrived in this section here, I take it the question is the same mill net arrived generally in this section here.

Mr. Davis: The witness referred to Topock first and to Yuma second.

A. Or this area here, Prescott and Phoenix.

By Mr. Wooden:

Q. In other words, the statement in paragraph 23 of your stipulated testimony is correct only for the points where the freight rates are the same from your Colton mill?

A. We get the same mill net at Yuma, approximately the same mill net at Yuma as we do in this area here.

Mr. Davis: The witness points to Phoenix, when he says "this area here."

May I ask that the witness be instructed not to say "this point here," but to give the name of the place.

The Witness: Phoenix.

By Mr. Wooden:

Q. You mean wherever your freight rates are the same from Colton to destination you get the same mill net;
42569 that is what you mean?

A. I mean that the mill net that we arrive at in the Phoenix area is the same mill net that we get at Yuma, approximately so.

Q. Well, how do you figure that if the Yuma freight rate was 27 cents and the Phoenix freight rate 30½?

A. The Yuma price is correspondingly lower.

Q. You took the points where your destination prices are the same, I pointed out Nogales and Phoenix, where

the destination price was the same but the freight rate was different. Now, for Globe, in addition what was your delivered price at Globe on that same price list?

Mr. Davis: That is what I offered to stipulate to, Mr. Wooden.

The Witness: That is what Counsel offered to stipulate, over in this area where we had freight disadvantage, we do not get the same mill net, but over here in this section we get the same mill net. The mill net arrived at in this section applies all over here.

Trial Examiner Norwood: Wait a minute. What do you mean by "this section" and "over here"?

The Witness: The section in the Phoenix area applies over to Yuma, and I would say Parker to Topock, and Kingman.

Mr. Davis: May I offer the stipulation again? I
42570 think I can save time, and I am doing it because I am anxious to try to get away this evening rather than take time on things we can stipulate to.

Trial Examiner Norwood: Go ahead.

Mr. Davis: I will stipulate that the mill net in points in eastern Arizona at which the El Paso mill has the freight advantage are less than the mill nets in the points where Colton has the freight rate advantage or freight rate equality.

The Witness: That is well stated.

By Mr. Wooden:

Q. Well, you are willing to agree to this, are you not, Mr. Blair, that wherever your destination price at various destinations is the same, but your freight rate to those destinations is different, that you have a different mill net at Colton?

A. I said that in this area here—

By Mr. Wooden:

Q. Don't talk about "this area here".

A. Well, state your question again, Mr. Wooden,
42571 so that I can get it better this time.

Mr. Wooden: Read the question, please.

(Question read.)

Mr. Davis: I must confess I do not understand the question myself.

The Witness: I do not understand it.

Trial Examiner Norwood: I think the answer is obvious.

Read the question again.

(Question again read.)

A. Yes, that is clearer now. You are meaning that when we had the same price at Nogales as we have into Tucson, we get a lower price at Nogales because we have a higher freight rate.

By Mr. Wooden:

Q. You say lower price at Nogales, you mean lower mill net?

A. Lower mill net, Nogales.

Q. All right. Wherever there might be other points in which that same situation would occur—

A. The same thing would occur, yes.

Q. All right. I think that is all.

Then, this statement in paragraph numbered 23 is to be modified considerably?

A. Well, I think Counse clarified that by a statement.

Q. And according to your testimony also?

Mr. Davis: Just a moment. That is a conclusion 42572 which I am going to object to, and I do not think it is a proper question to ask the witness; that is something for the courts to arrive at. I think we understand the facts.

Trial Examiner Norwood: I think that is a little too general. He asked him to modify the statement.

By Mr. Wooden:

Q. Well, you have modified the statement contained in paragraph 23 by your testimony, haven't you?

Mr. Davis: Just a moment. I object. It is a conclusion of the witness. That is for the Examiner to decide.

Trial Examiner Norwood: Sustained.

By Mr. Wooden:

Q. Did you intend to modify your testimony as stated in paragraph 23?

A. I think Counsel explained that for me. He clarified that statement. I say it is a little unclear to me and he has made it clearer.

Q. You do not know whether you intended to change the statement in paragraph 23 or not; is that it?

A. I think for the illustrations that we have given from this map we have clarified the situation.

Q. All right. You do not know what you intend, so—You state here in this paragraph, 23, that this—meaning the preceding part of the paragraph—was true ac-
42573 cording to the calculations made by the sales and traffic departments of the company. Did you make the calculation yourself?

A. We checked out the mill nets, and saw what we arrived at by the prices and freight rates to those different points; we checked up on these things.

Q. Were calculations made in support of that statement at the time or for the purpose of making the statement in the paragraph?

A. Our traffic department did make a number of calculations.

Q. As a basis for the statement in paragraph 23?

A. If that is in there in—

Q. You mean the "in there", meaning the stipulated testimony?

A. Yes.

Q. Where are those calculations?

A. They are in Los Angeles.

Q. In other words, your testimony here in paragraph 23 is based upon calculations that were made and are now in Los Angeles?

A. Yes.

Q. Made by others than yourself?

A. I possibly made some of them and the traffic department possibly made others.

Q. In the course of making those calculations, did you take account of cases such as I called your attention to involving Tucson and Nogales?

42576 The Witness: I think I have explained it by saying—

Trial Examiner Norwood: I will overrule the objection. I will ask you to answer the question.

The Witness: —that at Nogales we get a lower mill base than we had at Tucson or Phoenix, although the prices are the same at those three points.

By Mr. Wooden:

Q. My question is, did you take that into account when you made the statement in paragraph 23?

A. We knew that when we made those prices, if that is the question.

Q. That Phoenix-Nogales situation does not accord with the statement in paragraph 23, does it?

A. I think Counsel has explained that.

The Witness: What explanation do you want from me?

By Mr. Wooden:

Q. I want to know whether you overlooked it or whether you did not take it into account when you made the statement in paragraph 23.

Trial Examiner Norwood: Read the question.

(Question read.)

42577 Trial Examiner Norwood: Answer the question.

A. Well, the thing is so confused, I say that Counsel has explained that thing for me.

Trial Examiner Norwood: What is your explanation?

The Witness: I have tried to explain.

Mr. Wooden: I do not want the explanation. It is a simple question whether he overlooked it.

Trial Examiner Norwood: I want the explanation, if he has any.

Mr. Wooden: He has been over there.

Trial Examiner Norwood: Go ahead.

The Witness: Well, I cannot explain it right now.

Mr. Wooden: Your Honor, I move to strike paragraph 23 of the stipulated testimony on the ground that it is based upon calculations made by the sales and traffic departments of the company that are not available or made available for use in the cross-examination.

Mr. Davis: If the Court please, I would like to answer that motion, and I would like to have Your Honor, and also Mr. Wooden, if he will, to analyze No. 23 and see how ridiculous all of this cross-examination has been.

Mr. Davis: What it says is this, at the time of the preparation of price lists the prices stated on company

42578 price lists is for Arizona destinations, which destinations were limited, destinations to which the freight rates from the Colton mill were not greater than the freight rates from a competitor's mill. Now, that is the only destinations we are talking about. We are not talking

about Nogales, because the witness has testified that at Nogales the freight rate from Colton is 2 cents greater than the freight rate from El Paso, so we are not talking about Nogales. We are not talking about Globe, because at Globe the freight rate from Colton is 9 cents greater than it is from El Paso. We are talking about Yuma, where the freight rate from Colton is less than the freight rate from El Paso, and we are talking about Phoenix, where the freight rates are the same. Now, all the witness' testimony says that in Phoenix and Yuma and Parker and Flagstaff, where the freight rates are either equal to or less than the freight rates from El Paso the mill nets are the same, and he does not say a thing about the area or the destinations to which the freight rate from El Paso is less than Colton.

Now, one more point about the not making available the calculations. It is very obvious that the calculations can consist of only one thing, that is putting down the destination price and subtracting from it the freight from Colton to the destination point. Now, that gives you a mill 42579 net. Now, if Counsel wants the basic information upon which those calculations were based, I have the freight rates here, I have the price lists which give the destination prices. The witness, if Counsel insists, can sit down and make the deduction. As a matter of fact, I can make the deduction in my own mind for Yuma or for Parker or for Phoenix or any of them. It is a very simple operation. I think the motion should be denied.

By Mr. Wooden:

42581 Q. Isn't it a fact, Mr. Blair, that your mill net—that your mill gets different mill-nets in California, at California points, than it does from points in Arizona?

A. Yes.

42582 Trial Examiner Norwood: I will overrule the objection and ask him to answer it as to the period prior to July 2, 1937.

A. We do get different mill nets.

By Mr. Wooden:

Q. As a matter of fact, that has been customary for a number of years, hasn't it?

A. Yes.

Q. You get different mill nets in California from what you do out of Arizona?

A. Yes.

Q. Isn't that shown by a tabulation?

A. I think it is shown by the tabulation.

Q. On page 41 of your stipulated testimony?

A. I think that is tabulated there. That is what I am looking for.

Q. Where they compare Phoenix and Los Angeles?

A. Yes.

42583 Q. That is true of the differences between your mill net in the California points and in Arizona, isn't it?

A. That is about typical, yes. It represents the picture.

Q. When I said page 41, I should have said paragraph 80 of the stipulated testimony, appearing in the record at transcript page 42492.

Now, referring to paragraph 28 of your stipulated testimony, which gives a list of towns, and then paragraph 29 states that those towns are easterly of the line where the El Paso mills' freight advantage commences.

Mr. Davis: That is, certain of those towns.

Mr. Wooden: It does not say certain towns,—which are easterly.

By Mr. Wooden:

Q. Now, isn't it a fact, Mr. Blair, that some of those towns do not meet that description?

Q. For example, take Kingman, which is listed

42584 in paragraph 28, what is the freight rate from El Paso?

A. It is not shown here, but I judge it would be quite high.

Q. Isn't it about 50 cents?

A. Oh, it would be about 40 cents, perhaps.

Q. Well, isn't the rate from Colton, Crestmore, 25 cents.

A. To Kingman is 30½.

Mr. Davis: May I offer a stipulation, if the Court please?

Trial Examiner Norwood: Yes.

Mr. Davis: I shall be very glad to stipulate that there are only three towns named in the list which are easterly of the lines where the cement freight rate advantage occurs.

Mr. Wooden: What towns are those?

The Witness: Bisbee, Lowell, Holbrook.

42585 Mr. Wooden: All right. That is acceptable.

By Mr. Wooden:

Q. Now, let us pass on to paragraph 35 of your stipulated testimony.

Under what circumstances and when did you have these very few requests for the purchase of cement f.o.b. mill other than railroads and the Federal Government?

A. Well, we only have a request for purchases f.o.b. mill usually in the times of large construction, where special rates—

Q. Do you mean contractors?

A. No, like public works, for instance.

Q. Well, you said there that you had very few requests for the purchase of cement f.o.b. mill except from the railroads and the Federal Government.

A. And the Government.

Q. Now, I am after those exceptions, who and under what circumstances did such exceptional requests come?

A. Well, the Army engineers, for instance.

Q. No, leave out the federal purchases, and leave out the railroads, and then what requests did you refer to when you said you had very few requests for f.o.b. mill bids?

A. Well, you would have a case of the City of Pasadena building a dam. They might request a price f.o.b. mill, or the County of Los Angeles.

42586 Mr. Davis: I suggest the witness read the question. It relates to Arizona, does it not, Mr. Wooden?

Mr. Wooden: No. Paragraph 35.

Mr. Davis: Doesn't it? I am sorry.

A. You are referring to California, I take it?

By Mr. Wooden:

Q. It does not refer to any special territory.

Do you testify the City of Los Angeles has then requested for bids f.o.b. mill?

A. The County of Los Angeles, I think, has requested bids f.o.b. mill in order to take advantage of a special rate given by the railroads. I think cases like that are the only examples I can recall.

Q. Did you ever have any requests from dealers for f.o.b. mill prices?

A. We do not have any requests from them.

Q. What is that?

A. We do no. have any requests from them.

Q. Then, haven't you ever had?

A. We might have had.

Q. Didn't you have some years back?

A. We might have had.

Q. Well, didn't you have requests from dealers for f.o.b. mill prices at the time trucking was becoming prominent out there?

12587 A. I do not think so.

Q. Well, then, when and under what circumstances did you have requests from dealers for f.o.b. mill prices?

A. I do not know that we have had any requests for f.o.b. mill prices from dealers.

Q. Didn't you make f.o.b. mill prices to dealers at one time out there?

A. We did make an f.o.b. mill price, yes.

Q. And when?

A. Well, I would have to refer to prices. It possibly was back in 1930 or 1931, or away back; I don't know when it was.

Q. Wasn't that the period when the dealers were trucking in each other's territory after getting an f.o.b. mill price?

A. I don't think so.

Q. Well, how do you account for the fact that there was a time when you did sell dealers f.o.b. mill?

A. They wanted that accommodation and we gave it to them.

Q. That policy lasted how long?

A. Oh, I would say it lasted,—it might be a year.

Q. Along about 1930?

A. I would have to refer to the price list to see when that price was in effect.

Q. And you let dealers then come to the mill with their trucks and also let them have the cement f.o.b. mill?

A. We let them have it, yes.

12588 Q. Did you know where the cement was going?

A. We assumed they were taking it to their warehouses.

Q. You made your price based upon their destination, didn't you?

A. We had a different price at the mill entirely, I think.

Q. But didn't you allow them the freight from the mill to their destination in making up their f.o.b. mill price?

A. We quoted them destination price in some cases and allowed them freight to the destination.

Q. And with freight off the destination price, that is what you sold them at f.o.b. mill?

A. Sold them f.o.b. destination and allowed them their trucking charge to their destination.

Q. If that was not the circumstance under which you sold them f.o.b. mill, what was?

A. Well, dealers could come to the mill at one period there and pick up cement at an f.o.b. mill price, and with no freight allowances.

Q. And how did you arrive at the price you quoted them then?

A. It was just established, that is all I know. I do not know how we arrived at it.

Q. Well, was it arrived at by deducting freight from their destination?

A. No. As I recall, it was figured on the same—the Colton dealer dealer; the price the Colton dealer would pay if it was delivered to him down in Colton.

12589 Q. Wasn't that the equivalent of the destination price less freight from Colton?

A. No, we allowed dealers to pick up their cement at our mill on the same basis as the dealer in the town of Colton paid; I think that was the method.

Q. Well, your mill was selling at that period to dealers f.o.b. mill and your competitors were doing so also, weren't they?

A. They were.

Trial Examiner Norwood: What were the dealers at Colton paying?

The witness: Well, he was paying $2 a barrel delivered at his warehouse, or delivered.

Trial Examiner Norwood: Was that the same as the price prevailing in other towns in that section?

The Witness: Not at that time, I do not think, unless there was a uniform price there.

Trial Examiner Norwood: Well, was there any transportation savings accued to you on those sales?

The Witness: Do you mean the sales picked up at the mill?

Trial Examiner Norwood: Yes.

The Witness: Oh, naturally, there would be, if the prices were the same.

42590 By Mr. Wooden:

Q. I take it, then, that your policy with regard to selling dealers f. o. b. mill in Southern California has been different from your policy with regard to selling the Arizona dealers f. o. b. mill?

A. I do not think there is any difference right now.

Q. No difference now?

A. No.

Q. Was there a difference at one time?

A. There was a difference at one time.

Q. What was that difference?

A. Well, as I say, we allowed dealers to pick up cement at the mill at the same price that the Colton dealer paid for his cement in Colton.

Q. Allowed that to California dealers as well as Arizona dealers?

A. It might have applied to Arizona dealers, but I am not sure. We had very little requests for trucking from Arizona, so that I could not recall specific instances.

Q. Now, paragraph 36 of your stipulated testimony says you have sold to Arizona buyers delivery f. o. b. mill. Have you continued to do that?

A. Yes, we do that right now.

Q. In other words, you will do that for Arizona buyers but you won't do it for California buyers?

42591 A. Right now we will.

Q. Well, tell us when the policy as to Arizona and California buyers was the same, and when it changed, and when it became the same again; in other words, trace that back to 1930 and bring it down to date.

A. I think the policy was the same all the way through.

Q. In other words, at no time did you have a different policy regarding the Arizona buyers and California buyers for delivery at the mill in buyers' trucks?

A. I cannot recall the difference.

Q. As I understand it, you haven't sold dealers in their trucks f. o. b. mill in California since about 1930?

A. That possibly was the time.

Q. Well, now, in paragraph 36 you say you have sold to buyers for Arizona delivery f. o. b. mill. When did you sell to buyers in Arizona on that basis?

A. When they have requested it; when Arizona buyers have requested it we have sold them.

Q. Do you mean that if they requested it since 1930 that you sold them on that basis?

A. I think so.

Q. And in that respect your policy has been different than any policy, hasn't it?

A. There might have been times when it was a little different in California.

42592 Q. Isn't it different in that respect, as I understand it, since 1930, or thereabouts? You do not sell in California to dealers f. o. b. mill in dealers' trucks?

A. We sell to a California dealer f. o. b. destination and allow him the freight to his warehouse.

Q. And the same for Arizona dealers?

A. Yes, the same for Arizona.

Q. But you do not call that selling f. o. b. mill to the dealers?

A. We do not so reason it that way.

Q. What do you consider it to be, selling at regular destination price?

A. Selling at the regular destination price and paying for the hauling of it; that is what it amounts to.

Q. You mean allowing him the freight as an offset against is own hauling?

A. Yes, what we would pay a commercial trucker.

Q. Now, when you say in paragraph 36 that you sold—quote and sold cement to the United States for Arizona and Nevada points on f. o. b. mill bases, for many years, have you had any different policy between Arizona and Nevada points and other sales to the United States Government in other territories?

42593 A. We have quoted the United States Government with destination price, with provision to allow them commercial freight.

42594 By Mr. Wooden:

Q. Is that what you mean by quoting on an f. o. b. mill basis?

A. We have also, in the case of Nevada, quoted the Government f. o. b. delivered by truck destination price, freight destination price.

Q. Well, there are two questions that you haven't answered. Go back to the first one: Has your policy, stated

in the last sentence of your paragraph 36, of your stipulated testimony, been any different in Arizona and Nevada than it has in other States?

A. I thought you were talking about quotations to the Government, just a minute ago.

Trial Examiner Norwood: Now, can't you answer him directly on that?

The Witness: Give me the question again.

Trial Examiner Norwood: Read it.

(Question read.)

Mr. Davis: May I suggest that the witness read the last sentence in 36.

A. The company has quoted and sold cement to the United States Government on Nevada points on f. o. b. mill bases for many years.

Let me have that question again.

Trial Examiner Norwood: Read it.

(Question read.)

42595 A. I do not think it has.

By Mr. Wooden:

Q. Now, the other question was, grew out of a statement you made a moment ago, did you mean by selling or quoting f. o. b. mill that you allowed the freight off the destination price?

A. Do you mean in this last sentence?

Trial Examiner Norwood: Read that again.

Q. Yes.

A. The company has quoted and sold the United States Government for Arizona points and f. o. b. mill—

Q. Now, go back and read the statement there that the witness made a moment ago along that line, please.

(Record read.)

Q. Is that what you mean by the statement that you had quoted f. o. b. mill to the Government?

A. Well, you might construe it that way.

Q. How was that?

A. I say, it might be construed that way.

Q. Is that the way that you construe it?

A. I do not know what other answer you can arrive at.

Trial Examiner Norwood: That would be the equivalent of f. o. b. mill?

The Witness: That would be the equivalent of f. o. b. mill.

By Mr. Wooden:

42596 Q. Well, when you say you do not know any other answer, you mean you do not know of any other way to construe the statement than the way you have construed it?

42597 A. Well, if you quote destination price and check off the freight, you get a derived mill base; that is the best answer I can give you.

By Mr. Wooden:

Q. And you consider that derived mill base an f. o. b. mill quotation?

A. Well, I think I have answered by saying it is derived mill base, and we make definite f. o. b. mill base price; it is on a different quotation entirely.

Trial Examiner Norwood: Well, that is the equivalent, is it?

The Witness: Well, I will have to think and say that is the equivalent.

By Mr. Wooden:

Q. Of what?

The Witness: Because if it is derived, it is the equivalent of—

Q. Of what?

A. —of an f. o. b. mill price.

42598 Q. Well, by the same token, isn't it also the equivalent of the destination price from which you derive it?

A. I do not follow you there.

Q. By adding the freight back to it?

A. Arrive at the destination price on the same quotation.

Q. Now, passing to paragraph 37, you say it is your experience that competitors will learn of prices made and will meet lower prices in order to retain all business and compete for new business. They sometimes do not learn about those things for some time afterwards; isn't that true?

A. Oh, you don't always learn right at the time of cut prices.

Q. It might be weeks or months before you learn about them, wouldn't it? Isn't that right?

A. It might be.

Q. Well, you say that the result of their learning about it tends to—the result tends to be—the cut prices tends to result in general price decrease with no permanent shift in any company's customers. It might very well cause some temporary shifts?

A. I thought you were just reading there.

Q. I was just directing your attention to it. But you talk about permanent shifts. It might cause some temporary shifts, might it not?

A. It might result in some temporary shifts.

Q. How can you tell whether a temporary shift 42599 may not become permanent?

A. (No response.)

Q. Did you understand the question?

A. Not very well. If you can state it in another way, maybe I will.

Q. Well, you have undertaken to say here that the result is that there is no permanent shift in any company's customers. I am asking you how you can tell when and where a temporary shift that you have admitted may occur may become permanent?

A. Well, I think the idea is that with cut prices we come to know them and we do not lose our customers by it.

Q. But you have already stated that you may not know of it until some time after the customer has gone to the other company. Well, we will pass on.

You say that tendency operates to discourage price cutting. How much discouragement do you think that is to price cutting? Is it a substantial discouragement?

A. (No response.)

Mr. Wooden: It seems to me the witness has had ample time.

Trial Examiner Norwood: Well, I think you might give us your reaction to that.

42600 Trial Examiner Norwood: The tendency of competitors meeting prices that have been reduced, causing prices to seek a lower level.

The Witness: I see.

What is the question involved?

(Question read.)

A. Eventually becomes substantially a loss.

By Mr. Wooden:

Q. You also say in that same paragraph, you define price cutting as going to an individual customer at a price

below a generally quoted price in order to induce the customer to buy. Do you mean by a generally quoted price, of course, the price generally quoted by competitors?

42601 A. A generally quoted price is a price list price; that is what our salesmen operate on; quote from the price list.

Q. Well, you have not distributed that price list to your customers, have you?

A. No.

Q. So you have not generally quoted it in that sense, have you?

A. We quote it through our salesmen.

Q. Now, paragraph 38 of your stipulated testimony, there have been some new price lists put out, have there not, which were advances over the preceding price lists?

A. Yes, they have.

Q. And has there been price cutting in advance, or, I mean, prior to the time advance price lists were put out? Does that sometimes occur?

A. Yes.

42611 Q. Mr. Blair, when you stated in paragraph 41 of your stipulated testimony that in the great bulk of your biddings to Government agencies, your bids were calculated on a basis that would make it practically impossible for your bid to be tie or identical with bids of your competitors on a destination cost basis, did you base that statement on the number of instances involved in your biddings, or on the number of barrels involved?

A. On the number of occasions that we had to bid.

Q. You say, when you deduct the freight from destination price as quoted, the remainder on a mill basis, that that makes it practically impossible for your bid to be tie or identical with the destination costs of competitors?

A. We say it is impossible to tie in with the destination cost of competitors.

Q. Even when you make a mill bid derived from your destination price?

A. Yes.

Q. That depends, does it not, on whether your competitors are all bidding that same destination price?

A. It depends largely on the land-grant rates to the destination.

Q. Do you mean, then, that land-grant rates tend to

make the destination cost different with different competitors?

42612 A. Yes, that is the contention of the mill.

Q. Well, you have taken steps, have you not, to find out what the land-grant rates of competitors are?

A. Yes, we have.

Q. And was not that so that you might better inform yourselves as to what the destination cost to the Government would be from those competitive mills?

A. Yes.

Q. And were you getting that information as to their land-grant rates in order that you might make your delivered prices competitive with theirs?

A. Yes that was the idea, to make our prices competitive or better, if we had to.

Q. If you had to?

A. Yes.

Q. What determined whether you had to?

A. Well, experience on previous bids would give us a line as to whether we would make the right kind of price or not, in order to get the business.

Q. Is it your testimony that you have endeavored, when you obtained land-grant rate information from competitive mills, to use that information in an effort to make destination costs lower than theirs?

A. That is the intention.

Q. You have a wholly different intention in re-
42613 gard to Government bids than you have in your ordinary commercial business with regard to making your delivered price the same as competitors'?

A. We figure that the Government is in a different class and enjoys the land-grant rates, which the ordinary commercial customer does not enjoy.

Q. As a matter of fact, you have obtained the land-grant rate information through the Pacific Coast Justice?

A. That is one of the sources; yes.

Q. And they were only approximate land-grant rates, were they not?

A. That is what they said; they were only approximate land-grant rates.

Q. And you knew, as a matter of fact, did you not, that

even the railroads could give only approximation of land-grant rates in advance?

A. We knew that; yes.

Q. In other words, as a matter of fact, you have calculated some bids to the Government, have you not, with the use of land-grant rate information from the Pacific Coast Institute, that resulted in making your delivered cost bid to the Government the same as your competitors?

A. I don't recall when we did that, unless it was the period of the Code.

Q. Do you mean to say that you did it during the Code?

4261 A. We used that control clause that was in effect at that time. It might have an effect of equalizing prices.

Q. When you say it might have, that is what you used it for, is it not?

A. The control clause made a bid that was in accordance with prices that were filed during the Code.

By Mr. Wooden:

Q. Did you not use the control clause in order that your destination costs to the Government would be the same as those of your competitors?

A. During that period.

Q. Well, whenever you used it, whatever the period was, you used it for that purpose, did you not?

A. That is right.

Q. As a matter of fact, you—

A. I will correct that—not after the Code period.

4261 Q. What is the period of the Code that you refer to?

A. Oh, I understand from some time in December, 1933, up until June, 1935— some part of June, 1935.

Q. Is it your testimony that after June, 1935, you did not use the control clause?

A. As far as I recall, that is my opinion on it.

Q. Can you fix the time when you did finally and definitely discontinue the use of the control clause?

A. Only by a long study of the bids that we made after that time, could I tell.

Q. Your best recollection or opinion is, that you discontinued it in June, 1935?

A. That is my best recollection.

Mr. Davis: I have here all the bids, Mr. Wooden, if you would like to refer to those bids, filed after June, 1935. I have gone over them with Mr. MacIntyre, and they are here for that reference.

Mr. Wooden: Thank you.

Mr. Davis: All of them filed commencing June 4th. You referred to June, 1935, and I understand you have three there. I think there are about ten of them.

By Mr. Wooden:

Q. I am showing you four bids that you brought here with you from the files of your company. Do you recognize them as such (handing documents to the witness)?

42616 A. Yes.

Q. Would you look at them and tell me whether or not the control clause was used in those four cases?

A. Here is that one there (indicating).

Q. What is the date of the bid?

Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

By Mr. Wooden:

Q. When you say "that one"—

A. Here and here (indicating).

Q. In each case, give the date, the name of the Government agency involved, and the invitation number.

42617 A. This is the bid of the Department of Agriculture, Forest Service, Coronado, dated July 31st, and due on August 5th.

By Mr. Wooden:

Q. 1935?

A. 1935. This was a bid, Government destination cost, to Patagonia, with the control clause on it.

Q. You mean the invitation of the Government contains the control clause?

A. Our copy of what we bid to the Government shows that we put that control clause on.

Q. In other words, it was not on the invitation?

42618 A. I can't say as to that. This is a copy of the bid that we made to the Government.

Q. But the fact that it is a copy does not show whether or not it was on the invitation?

A. No; we have certain information on the blanks provided by the Government, and this may have been added by us.

Q. All right. Take up the next one.

A. From the Department of Agriculture, Forest Service, dated July 30, 1935, and due on August 5, 1935. We bid on a car of cement to the Government at Continental destination, with this control information on our copy of the bid.

Q. The control clause?

A. Yes.

Q. Did you give the name of the department?

A. Yes; the Agricultural Department.

Q. All right. Take up the next one.

A. A copy of a bid to the Interior Indian Service, Public Works Construction, dated August 11, 1936. It calls for bids on 582¾ barrels of cement. We made a quotation f.o.b. our mill, apparently no control clause on that. It would not be necessary when it was a bid f.o.b. mill.

Q. And that was an equalization clause of some kind. That is not the control clause that I refer to.

Now, in the preceding three cases that you have described, the control clause you referred to was one which
12619 provided the Government should ascertain its cost f.o.b. cars for invoicing purposes by deducting either the land-grant or commercial or special freight rate, whichever one was lowest.

A. Yes.

Q. You mean f.o.b. cars your mill for invoicing purposes; is that right? I just wanted to clarify the expression "f.o.b." cars". You meant their f.o.b. cars at your mill for invoicing purposes?

A. It says the United States Government shall determine its cost f.o.b. cars Colton.

Q. All right. That is your company.

12620 Q. The document that your Counsel showed you is which one of the documents that I was asking you about?

A. You were asking about this bid now.

Q. No; give it by date, invitation number, department, and bid.

A. Agricultural Forest Service, dated July 16, 1935.

Q. Yes.

Mr. Davis: May I make a remark here? I was trying to save some time—

Trial Examiner Norwood: Let him straighten this out first.

Mr. Davis: Yes.

Trial Examiner Norwood: It is in a confused state now.

By Mr. Wooden:

Q. I am showing you now another one. Tell us what the invitation number, the date, and the department shown there are.

A. This is dated July 31, 1935, Agricultural Department, a bid on 160 barrels of cement at Patagonia, f.o.b. destination. That has a control clause on it.

42621 Mr. Davis: I offer to stipulate the provisions of the invitations and the f.o.b. provisions on which
42622 bids were made from the first of June, 1935, for whatever period after that time Counsel wants to select—one month, two months, three years, four years—

Mr. Wooden: Are you willing to stipulate that there were some cases after June, 1935, and as many as ten, I believe you said, where the company used the control clause, such as I have described?

Mr. Davis: In going over them, I have found three, the ones which Mr. MacIntyre selected from those two cartons of bids this morning, and I will stipulate, for the purpose of avoiding the waste of this time, exactly what those bids provide, or I will stipulate that they may go into evidence to show that three out of this bunch here were made on that basis.

Mr. Wooden: What was the figure "10" that you mentioned?

Mr. Davis: The figure "10"?

Mr. Wooden: Yes; I understand you to say that there were about 10 cases.

Mr. Davis: No, no. I said that out of 10 cases in connection with the Forest Service, in June and July, there were three which had the control clause on them.

Trial Examiner Norwood: He may accept the statement about those three, and he may ask the witness whether there were any other cases.

Mr. Davis: Not any other cases of this kind, but how many other cases there were which were on another basis.

Trial Examiner Norwood: Proceed.

Mr. Wooden: We can accept the stipulation, subject to another question that will not go to the same particular basic point.

(COM. EXS. 3257-A to 3257-F, 3258-A to 3258-F, and 3259-A to 3259-D were offered and received in evidence.)

By Mr. Wooden:

Q. Now, my understanding—and I just want to make sure of it, Mr. Blair—is that the control clause
42624 shown in these three exhibits were something that you inserted in your bid, and that it was not in the invitation from the Department?

A. I would say it was inserted by us; yes.

Q. And that it was not in the invitation?

A. It was not in the invitation. I would say this much, that the control clause would not apply on this bid at all, because it had not been completed.

Q. You are referring to Exhibit 3259?

A. 3259. I do not think that that control clause is applicable to the bid, because the word "Colton" does not appear, and the word "Coaton" does not appear here (indicating), and a quotation was straight f. o. b. mill; so, consequently, the control clause would not be necessary.

Q. Well, any f. o. b. mill was f. o. b. mill cars at Colton, was it not?

A. Yes, f. o. b. mill at Colton.

Q. And f. o. b. cars Colton or f. o. b. mill Colton.

A. Yes.

Q. That being the location of the mill.

A. Yes.

Q. On 3259, it is a different meaning from the one at 3257 and 3258?

A. It is not applicable to this bid at all. It is a straight f. o. b. mill price.

Q. Why did you put it on if it was not applicable?

42625 A. Whoever makes out the bids would possibly follow the previous bids as a guide, and put the thing in. Force of habit, I would say.

Q. You made the calculations for most bids on Government invitations, I understood.

A. I think that is a case where I did not.

Q. You had charge of sending them in.

A. I may have been on my vacation, and that is just how it happened.

Q. Now, since we have these cases after June, 1935, where you used the control clause, tell us definitely when the last one was.

A. Well, we have gone through our records, and these bids would evidence the fact that these were the last cases when the control clause was used, and I would say that they possibly crept in there through an error on our part.

Q. If you had used the control clause in those cases, as you did, and your practice had been not to use it, you would have been competitive with your competitors, would you not?

A. We might have been high in price. We might have been low in price.

Q. Do you know whether or not your competitors used the control clause on those same bids?

A. No, we do not.

Q. Do you know whether or not they used them
12626 intermittently for some time after June, 1935, like you did?

A. We don't know that.

Q. Did you consider the use of the control clause as being the equivalent of f. o. b. mill bid?

A. Yes, we did. I believe that was the intention of it.

Q. Now, passing to paragraph 48 of your stipulated testimony, which has reference to the calculation of
12627 freight rates, you say that list was not kept up since 1933. Can you tell me why it was discontinued then?

A. Well, we had to cut down the amount of work. That is one thing.

Q. Any other reason?

A. As far as I know, that is the only reason. We cut out a lot of detail work. We do it every day.

Q. Did that tabulation there referred to include all of your sales territory?

A. It most likely would.

Q. Don't you remember whether it did or not?

A. It showed the mill nets and the freight rates on the points shown on our price list during that period.

Q. You did not need a tabulation of freight rates in that area in Southern California, did you?

A. As soon as we had the destinations shown, we fig-

ured out the freight rates to all the points, no matter where they were. As long as they were on the price list, we figured the mill net.

Q. You did not need a tabulation of freight rates to keep up with the situation in that territory after you had your zone prices?

A. It would still be desirable that we keep it up for a little while afterwards.

Q. Is that not the one reason why you discontinued it?

42628 A. No, I don't think so. We discontinued the extension of those calculations, because it was too much work to keep it up.

Q. You say that is the only reason?

A. That is the only reason.

Q. It would be just as useful as it had been?

A. It would be useful as any time, but it is too much work to extend and calculate three or four hundred calculations.

Q. What is this Pacific Freight Tariff Bureau mentioned in paragraph 49 of your stipulated testimony?

A. It is just a railroad organization to furnish tariff information.

Q. Do you subscribe to it?

Mr. Davis: That is in evidence, Mr. Wooden.

Mr. Wooden: What is?

Mr. Davis: The tariff which he referred to.

Mr. Wooden: The Bureau—the Tariff Bureau.

Mr. Davis: No; that freight schedule is in evidence. It is a two line-haul schedule.

By Mr. Wooden:

Q. You say in that paragraph that these tabulations are used principally for information in making Government bids. If you were bidding on an f. o. b. mill basis, why did you have to know what the freight rates were from your competitors' mills?

A. If we wanted to give the Government a better
42629 price in order to get the business, we might cut the price. We might want to know what the other mills' freight rates were to that destination.

Q. It also gave you the opportunity to meet their competition at destination?

A. It gave us that opportunity, yes.

Q. Now, this land-grant rate information that you ob-

tained from the Pacific Coast Cement Institute, what use did you make of that?

A. Made use of it to the extent of figuring what it would cost the Government if it bought cement from a competitive mill.

Q. What it would cost—

A. The Government at destination.

Q. You had never received exact land-grant rate information from the Pacific Coast Cement Institute; did you? Was it not just approximate?

A. We couldn't know whether it was exact or not. The Government was, I guess, the only one who could set that.

Q. So when you used that information, you did not know whether the land-grant rate information you had would represent exactly what the land-grant rates would be to the Government?

A. Not exactly.

Q. How do you know that the railroads are fur-
42630 nished the same information, so as to request the companies who wanted statements as to land-grant rates or any rate information about land grants?

A. Well, we received letters from the railroads, and we could tell that they were carbon copies, and on the letters it was shown that they were addressed to the other cement companies.

Q. You have made bids, have you not, with land-grant rates involved, that reflected decimals to several points beyond cents.

A. There are bids with three decimals, and sometimes with two.

Q. As a matter of fact, have not some of them—

A. On these here (indicating), they are extended beyond that.

Q. When the control clause was used?

A. Yes.

Q. Now, I show you one of the bids you have produced, dated August 11, 1936, for delivery at Casa Grande, Ariz., to the—what department is that?

A. I thought that was one that was discussed, wasn't it?

Q. Well, we did, but we did not put it in evidence. What department is it?

A. That is the—

Q. Quartermaster?

42631 A. Interior, Indian.

Q. Interior, Indian?

A. Yes.

Q. There was no control clause there and yet your bid was in four places beyond the cents, four decimals, was it not?

A. Yes.

Q. How do you account for a bid in such numerous decimals, without the control clause?

A. That is a bid f. o. b. mill.

Q. How do you account for a bid f. o. b. mill that would have so many decimal points?

A. I can't account for it at this late date. I don't see any reason for all those decimals on a mill bid like that.

Q. Is not the bid figured f. o. b. mill?

A. Yes.

Q. $1.881528 per barrel.

A. Yes.

Q. Would you not say that that indicated that it was a derived figure from some destination price?

A. It was a figure derived by taking into consideration the land grants from other mills.

Q. And deducting some land-grant rates from the destination price?

A. Let me see that.

(Mr. Wooden handed a document to the witness.)

42634 (COM. EX. 3260-A and 3260-B was offered and received in evidence.)

42635 Q. Is it your testimony, Mr. Blair, that this last case is the only case where you have quoted the Government in decimals beyond cents, when there was no control clause involved?

A. To the best of my knowledge, it is.

Q. Do you wish to qualify or make any change in that testimony?

A. I want to amend my answer in this way, that in looking through the record of our bids to various Government departments, I find two others that have not been mentioned by me, and I will give them to you.

A bid to the Indian Service on July 5, 1935, for delivery to Gallup and or shipping point, with bids in four

42636 decimal figures.

Q. Read the figure.

A. That bid was 1.4701 f. o. b. mill, subject to cash discount of 10 cents.

Q. Was that the Interior on July 16th?

A. The Indian Service.

Q. Interior?

A. To the Bureau of Reclamation. On January 15, 1936, their invitation No. 42532-A, for delivery at Phoenix and/or shipping point. Our quotation was $2.08538 f.o.b. mill, less discount of 20 cents and cloth sack credit of 40 cents per barrel.

Q. Do I understand that in such cases the quoting of such decimals was the result of deducting some land-grant figure from the destination price?

A. It usually was that way.

Q. Referring to your paragraph numbered 55, where did you get this special rate for the Bartlett Dam job equal to the Monolith rate?

A. I believe an equal rate was put in to the Bartlett Dam for all the mills.

Q. Including Monolith?

A. Including Monolith.

Mr. Davis: What paragraph number was that?

Mr. Wooden: No. 55.

By Mr. Wooden:

Q. Referring now to paragraph 56, will you de-
42637 fine what the "inner mills" and "outer mills" as referred to in that paragraph?

A. The "inner mills" are Colton, Crestmore, and the outer mills are Monolith and Victorville.

Q. What do those terms mean, "inner" and "outer"?

A. Well, the closer to Los Angeles are the "inner."

Q. Now, referring to the same paragraph, will you tell us what charge you made as there referred to for mill delivery to the truck?

A. Where does that appear, Mr. Wooden?

Q. In the subparagraph immediately preceding the numbered paragraph 57, where you say you abandoned the charge for mill delivery to trucks.

A. Well, we had a premium, if you care to call it that, on trucking from the mill.

Q. Of how much?

A. It was at one time 8 cents and it was as high as 20 cents; never any higher than that.

Q. Was it 20 cents at the time it was discontinued?

A. Yes.

Q. Over what period of time did you have that extra charge for delivery to truck?

A. I believe it was 1933, but I couldn't say exactly, without looking up our price list.

Q. Well, you say in the same sentence you have
42638 made no extra charge since 1930.

A. Well, I think that would be the date, 1930, when it was discontinued.

Q. I am trying to fix the other side of it, as to when it began.

A. Oh, when it began?

Q. Yes.

A. When we applied it?

Q. Yes; first.

A. Well, I would say perhaps, one or two years prior to that.

Q. That was during this same—

A. It didn't last all the time, anyhow. It was 8 cents at one time and then taken off, but at that period along there there was no premium, and then the 20 cents was put in, I think.

Q. Did that extra charge lessen the amount of trucking?

A. Well, to some extent it did. There was always some trucking. No matter whether you had eight or twenty, there was still trucking.

Q. Some of the dealers were in favor of the continuation of the practice of being permitted to buy at the mill in their own trucks, were they not?

A. Yes; they were.

42639 Q. How do you account for the great increase in the percentage of your truck shipments, beginning in 1930, as compared with the two years immediately preceding, as shown in paragraph 57 of your stipulated testimony?

A. Well, the other mills began to truck, I believe, and we had to truck direct to the job in order to meet that competition.

Q. Well, the great increase in your trucking began at the time you discontinued the loading of trucks, or selling to dealers' trucks at your mill?

A. The increase in trucking as shown by our system of trucking and not by the dealers' system of trucking.

Q. That is what I am getting at. You did have your

own system of trucking at the time you referred to as discontinuing the sales to dealers' trucks at the mill, did you not?

A. They were still permitted to buy at the mill.

Q. In other words, this increase from 5.43 percent in 1929 to 47.70 in 1930 was the result of an increase in truck shipments, in your own trucks?

A. In our own trucks; yes.

Q. And not the result of an increase in the amount taken by dealers in their trucks?

A. Oh, no, no.

Q. And ever since 1930 that percentage of truck shipments represents truck shipments in your own trucks?

A. Yes; in our own trucks.

42640 Q. And such deliveries are made, are they not, on the regular delivered price basis?

A. They are.

Q. Now, referring to the paragraph numbered 58 in your stipulated testimony, I understand that dealers in Arizona have been allowed to take delivery at the mill on trucks provided by themselves.

A. Yes.

Q. And there has been no change in that?

A. No change in that policy.

Q. That has been allowed.

A. Yes.

Q. But yet I understand also that a few dealers have requested it; is that correct?

A. That is correct.

Q. And, therefore, I understand that few such sales have been made.

A. Few sales of that kind have been made.

Q. Why has that been permitted where requested in Arizona and not in Southern California?

A. Well, some locations in Arizona might be off the railroad.

Mr. Davis: Just a minute. I object to that. It is assuming a set of facts not in evidence. The witness just testified before lunch on that subject of California de-

42641 livery by dealer's truck.

Trial Examiner Norwood: Read the question.

(Question read.)

A. And want delivery.

By Mr. Wooden:

Q. Well, from our Southern California—

Trial Examiner Norwood: I will overrule the objection. Go ahead.

By Mr. Wooden:

Q. Have there been some in Southern California off the railroad that might want truck delivery?

A. We permit truck delivery in California. Dealers come to our mill and pick up cement at our mill by truck.

Q. In their own truck?

A. Yes.

Q. There has been no change in California, then?

A. No.

Q. In that respect?

A. No.

Q. But your price terms are on a destination basis.

A. On destination basis.

Q. Less freight.

A. Less the established freight rate.

Q. Well, how much of these truck shipments since 1930 that are tabulated in paragraph 57 would you say 42642 was made in trucks of the dealers?

A. I think one percent would cover it.

Q. Can you tell me to what extent the truck rates by common carrier are the same in Southern California and Arizona?

A. The truck rates in Southern California vary from one-half cent to one and a half cents higher than the railroad rates.

Q. To the same destination?

A. To the same destination. In the case of Arizona, the railroad rate and the truck rate are the same to some points. In a few points, I believe the truck rate is 2 cents a hundred higher than the rail rate.

Q. Referring to your paragraph numbered 59, instead of requests being extremely rare at one time, they were rather frequent at one time, for delivery at the mill on trucks provided by themselves?

A. It was not so frequent as it was so irregular and bothersome as to the time of calling at the mill. That is what that refers to.

Q. Well, prior to 1930 you had frequent requests, had you not, for delivery at the mill on trucks provided by the purchaser?

A. We had quite a bit of picking up at the mill at various times, but it has always been a source of trouble to us.

Q. What methods have you used to discourage
42643 delivery to trucks at the mill provided by the purchaser?

A. I don't think we discouraged it.

Q. And you say the practice is discouraged in paragraph 59.

A. Well, we would rather not have it.

Q. Well, that is true enough, but I am asking you what methods you used to discourage it.

A. Well, we limit the quantity that they can pick up at the mill in some cases.

Q. Any other way?

A. Well—

Q. When you say— Well, I would like to have an answer to that question.

A. Well, when there was a premium on trucking, that was discouraging it.

Q. Any other methods?

A. I don't recall of any other methods right now.

Q. When you say in that paragraph:

"Practically all purchasers desire delivery at destinations and a price fixed on that basis."

Do you mean to say that practically all purchasers want a destination price that is the same from all sellers?

A. No; what we say there, I believe, is that purchasers want a price delivered in their warehouses, and to be free from any other deductions for freight or anything like that. They would like the one-price system.

42644 Q. You would want that to be interpreted as meaning that practically all purchasers want a destination price that is the same at particular destinations?

A. No; I don't think that is the intention.

Q. Well, you do not want it interpreted that way?

A. No.

Q. Now, was there not some connection between the ending of this trucking practice in 1930 and the setting up of these zones?

A. I don't think so. I think those zones that we referred to were established in 1927.

Q. Was there not some connection between the trucking by dealers into other dealers' towns that had something to do with the setting up of the zones?

A. There always has been friction between dealers in one town and in the other, trucking in the territory.

Q. Was not that more prevalent before the zones were set up than after?

A. I would say it was.

Q. As a matter of fact, was not the zones set up in part as a means of discouraging that trucking?

A. That might be so construed; yes.

Q. Will you state, Mr. Blair, to what extent your mill has made f.o.b. mill bids to Government agencies without deriving the f.o.b. mill figure or relating it to des-
42645 tination price or cost?

A. Well, in the last few years, I would say that our company has quoted f.o.b. mill 70 percent of the time.

Q. Fix the time; what period? You say "in the last few years."

A. Well, I would say three or four years, perhaps.

Q. In other words, since 1937.

A. I would say about 1937.

Q. You mean to say that in those cases you quote f.o.b. mill without knowing the destination?

A. Without reference to destination prices, less commercial freight; I will put it that way.

Q. You do know the destination.

A. In a great many instances; yes.

Q. In very few cases you did not know the destination.

A. Yes.

Q. You say that in 70 percent of the cases since 1937, say, you quoted f.o.b. mill without relating that quotation in any way to the destination price figure?

A. Without taking the destination price and deducting the commercial freight. In other words, it was a figure and two decimals rather than in three. The deduction of the commercial freight had resulted in three decimal points.

Q. Well, my question is whether you related it in any way to a destination price figure.

42646 A. I don't know that it was.

Q. Then, is it your testimony that in 70 percent of your cases since 1937 you quoted f. o. b. mill to the Government without relating that quotation in any way to a destinaton price?

A. Do you mean—f. o. b. mill; that is what we have had—

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Is that correct or not?

The Witness: That is correct.

By Mr. Wooden:

Q. Prior to that time, do I understand it was your practice and policy to relate your mill quotations to the Government to some destination price?

A. They ususally were. It was a convenient way of figuring.

Q. I am showing you, Mr. Blair, the bids produced by you relating to invitation No. 42682-A, dated March 30, 1937, for 11,000 barrels for use at Mesa, Ariz. Would you say that your bid there and methods of arriving at it was typical of the methods employed as of that time and prior thereto?

42647 A. Well, we might use both systems.

Q. Well, there you quoted f. o. b. shipping point, did you not?

A. Yes.

Q. Your mill?

A. Yes.

Q. Well, would you say those papers were typical of the methods employed in arriving at an f. o. b. mill bid to the Government as of that time and prior thereto?

Mr. Davis: May I ask does the question refer to the bid, the second invitation, referring to "those papers"?

Mr. Wooden: It means the same thing.

Mr. Davis: All papers attached to the bid?

Mr. Wooden: That is right.

Mr. Davis: As well as the bid itself?

Mr. Wooden: That is right.

A. This method is typical of a number of cases that might happen during that period. That is the best answer I can give you on that.

Trial Examiner Norwood: What period is that?

Mr. Wooden: The date of the invitation is March 30, 1937, and the bid submitted, I think, shortly after that. I would like to have these papers marked for identification, and I would offer them.

42649 Q. Before I go further, I would like to ask the witness to tell us what these various sheets are.

For instance, what is the sheet marked Commission's Exhibit 3261-H, for identification?

A. Well, it is an estimated cost to the Government on this bid here, what it would cost the Government if the price was bid on this basis, and they paid the Government rate at that figure. Here is a comparison of
42650 the commercial price at Mesa, showing the net return earned at Mesa, 1.561.

Q. On dealer business?

A. On dealer business.

Q. What is the No. 3 calculation there?

A. Well, taking the mill nets on the Mesa shipment and adding the Government land-grant rate, and finding out what the Government gross would be at destination.

Q. That sheet was made up as part of your office work in deciding what figure to bid?

A. What figure to bid.

Q. All right. Go ahead.

A. This apparently is the record of bids that was bid. This here is a record of the bids.

Q. That is lettered I under the exhibit number. What is this sheet lettered J under the exhibit number?

A. It is an analysis of these figures, of the bidding, and a breakdown of the bidding.

Q. All right. What is the next one, letter K?

A. It is a carbon copy of that.

Q. A duplicate?

A. A duplicate.

Q. Of the preceding sheet?

A. Yes.

Q. Then, beginning with sheet L.

A. There was a number of problematical calcu-
42651 lations as to what other bidders would bid, so we could determine what we should.

Q. That is part of your preliminary study before you decided what to bid?

A. Yes.

Q. And what the sheets beginning with N represent. Can you say in whose handwriting that is?

A. One of the boys in the office. It is a record of Government bids that other agencies had received, I think.

Q. Was that made before or as part of your preparation to bid on this particular invitation?

A. It might and it might not. I couldn't identify this particular thing right now.

Q. All right. Go on with the next one, the sheet lettered O. That is part of the same thing?

A. That is just a record of the previous bids on Government work.

Q. This C. P. C., I take it is California Portland Cement Company?

A. Yes.

Q. And then this sheet lettered P. What is that?

A. Well, it is just another work sheet, figuring out the destination costs and what other mills would possibly bid from their mills.

Q. This is also preliminary to your submitting a bid?

42652 A. I think it is. This would require a little study to find out just exactly what happened, and I do not want to be bound too closely by a loose statement.

Q. What is this last sheet that is attached, marked "S"? And that is folded and contains a number of handwriting pencil tabulations. What is that?

A. It appears to be a comparison of bids that were made on previous Government work, down to either a mill base or destination cost.

Q. Are not these dates that appear over in the first column?

A. These are the dates that the bids were due—due 3/17/36.

Q. And this price, Mesa, $3.32, at Riverside.

A. Dealer destination costs.

Q. Were those also used as part of the process of deciding what bid you would submit on that invitation?

A. Well, it might be hooked up here wrong, but it still might apply to this bid. It is a comparison of some kind.

Q. It was not at all uncommon, was it, for you to take into account what a previous bid had been in making up a new bid?

A. No; that was part of the system, to figure out what had been bid previously.

Mr. Wooden: I think the offer has been made. If not, I will make it formally.

42653 (COM. EX. 3261-A to 3261-S was offered and received in evidence.)

42654 By Mr. Wooden:

Q. Mr. Blair, referring now to paragraph numbered 64 of your stipulated testimony, you compare there a bid of $1.98 in cloth with a mill net of $2.02.

A. Yes.

Q. When you say that price is less than the mill net realized from commercial sales at prices prevailing on March 30th, did you mean that the mill net was less than the mill net realized from commercial sales?

A. The bid here to the Government was 4 cents per barrel less than the commercial sales.

Q. In other words, the difference between $1.98 and $2.02?

A. That is the saving to the Government. That was the idea.

Q. That was the difference in the mill nets involved.

A. The difference in the mill net would be reflected in the difference in price.

Q. And the mill net difference is 4 cents there.

A. Yes.

Q. And the price difference was 4 cents; is not that correct?

A. Yes; that is the idea.

Q. Now, when you say that the price was less
42655 than the mill net realized from commercial sales at prices prevailing on March 30th, then you gave the Los Angeles price in support of that; is that correct?

A. That is right.

Q. As a matter of fact, were not the mill nets at other places than Los Angeles lower than the mill nets at Los Angeles?

A. I think the price was compared to the same destination.

Q. You did have each zone $1.98 in cloth—not for particular destinations but for each zone. Is it not a fact that your mill nets at points other than Los Angeles were lower than at Los Angeles?

A. In some few cases.

Q. On commercial business.

A. Yes.

Q. Is not that shown by your tabulation appearing in paragraph 17 and now appearing on page 42461 of the record?

A. The comparison would have to be made on the same periods, though, I think.

Q. Well, is it not a fact that your mill nets from sales at points other than at Los Angeles had been lower than your mill nets on sales at Los Angeles?

A. That is true.

Q. And was not that true as of March, 1938?

A. Yes; it would be true in that period.

42656 Q. Have not your mill nets from other California points than Los Angeles been as much lower than that Los Angeles mill net by as much as five and twelve cents?

A. I don't quite follow you there, Mr. Wooden.

Q. Well, take—

A. What table are you looking at?

Mr. Davis: Page 8.

Mr. Wooden: Page 8.

By Mr. Wooden:

Q. Take Chula Vista appearing on your paragraph numbered 17. Was not your mill net there 12 cents less than at Los Angeles?

A. Yes.

Q. Did that remain the same up to March, 1938?

A. Substantially the same, yes, I would say.

Q. In other words, if you had made a comparison between your mill net at points other than at Los Angeles, you might not have been able to say that your price was lower than your commercial mill net on that bid?

A. Well, it was lower on this particular bid when compared with the destinations where the cement was most likely to go.

Q. In other words, you assumed that that cement bid on for that zone was going to Los Angeles?

A. I suppose so. I don't have the bid here, but I think—

Q. It called for a price in a zone, did it not?

A. Well, where is zone 29? That may be a de-

42657 scription by the Government attached to a map, you see.

Q. Yes.

A. Now, unless that 29 refers to Los Angeles, why, I can't answer you correctly.

Q. As a matter of fact, don't you know that those zones were not limited to some particular destination, but took in many destinations?

A. I think there was correspondence attached to that

bid, describing how we were bidding, and I think Counsel has discussed that already.

Q. Well, my point is this: Why do you support your claim that the price bid in that zone would give it a lower price than your commercial price by comparing the Los Angeles mill net, when you did not know that that cement was going to be used in Los Angeles?

A. Well, if the zones were further away from Los Angeles, the advantage would be still more in favor of the Government, wouldn't it?

Q. I wouldn't know about that, but you had a lower mill net at other points, more than 4 cents lower than at Los Angeles?

A. Oh, we admit that in this table here. We had some low mill nets down there in San Diego County.

Q. Now, referring to your paragraph numbered 65 of your stipulated testimony, you say that if an invitation does not disclose the destination at which the ce-
42658 ment is to be used, the Government agency that is purchasing it cannot determine which bid is low?

A. That is what we contend.

Q. Even though the Government may take it at the mill and transport it either by land-grant routes or by truck?

A. The ultimate destination means the difference in the cost to the Government.

Q. But you say the Government cannot determine without disclosing in its invitation which bid is low?

A. I don't think they can.

Q. Can they not determine that they will use a land-grant rate that you may not be familiar with and decide it is the low bid?

Mr. Davis: Just a moment. I object to the question on the ground that it misinterprets the answer, and puts words into the mouth of the witness. He studiously says that the Government could not determine it—.

42659 Trial Examiner Norwood: I overrule the objection, and I will let him explain it.

By Mr. Wooden:

Q. The statement is made in this paragraph 65 that: "The invitation furnished no information from which the Government, the Comptroller General, or a bidder could determine which bid was low."

Mr. Davis: I beg your pardon. I see I am mistaken.

Trial Examiner Norwood: Read the question.

(Question read as follows:

"Q. But you say the Government cannot determine without disclosing in its invitation which bid is low?

"A. I don't think they can.

"Q. Can they not determine that they will use a
42660 land-grant rate that you may not be familiar with and decide it is the low bid?")

A. We cannot determine, and I don't think the Government can determine, who is the low bid in the case of that kind, unless they set a destination and make comparisons in that manner.

By Mr. Wooden:

Q. Or unless they have in mind a destination which they do not care to disclose to you.

A. Well, if they had in mind a destination which they did not want to disclose, we might be in a position to say who was the low bidder.

Q. At destination?

A. At destination.

Q. Has not the Government at some times made awards to you for cement to be stored at your plant until shipment was made?

A. They have.

Q. Don't you think the Government could determine from the mill bids which bidder was low and place the award, knowing merely that it was going to use the cement in a certain general area, without knowing the exact destination?

A. I don't think so. I think we would have to have the definite destination before we could determine accurately that it was low.

Q. Referring to the same paragraph, numbered 65, you make the statement there that: "For delivery at sev-
42661 eral other points in Southern California by truck or by rail, the company's bid was the most favorable to the Government."

Do you see that?

A. Yes.

Q. As a matter of fact, the several other points that you referred to, in which you included in your letter that is in evidence as an exhibit, were points at which the Government was not going to use that cement; were they not?

A. We didn't know when the bid was made where they were going to use the cement.

Q. But you now know, and you knew when your made this statement here, did you not?

A. Yes; we had correspondence on it.

Q. Yes; and yet you made the statement here that you were low at several other points besides Los Angeles, that your bid was the most favorable to the Government. Is it not a fact that your own exhibit shows that these several other points were not the points at which the Government wanted to use that cement?

A. I can't determine that.

Q. Did you not check what your correspondence with the Government on this matter was; did you not take that into account when you made this statement here in paragraph numbered 65?

A. That is all in the record, I think, and has been
42662 discussed.

Q. Yes, I know it is, and this is in the record as your statement, as your testimony here, and I am asking you whether you did not take that correspondence into account when you made the statement in paragraph numbered 65 that I directed your attention to.

A. We evidently did.

Q. And when you did you argued here that there were several points other than Los Angeles at which your bid was the most favorable to the Government, did you not?

A. That is my recollection.

Q. Don't you recall now that the correspondence shows that those points that you mentioned in your letter were not the points at which they wanted the cement?

A. I can't answer that, Mr. Wooden, without looking at the whole correspondence on the matter.

Q. Well, did you not look it up, or did you not have that in mind when you made the statement in paragraph 65?

A. I undoubtedly did.

Q. Did you not receive correspondence from the Procurement Division in that matter that took definite issue with your statement to the effect that they—

A. They might take definite issue, but still possibly did not convince us.

Q. Well, you had all the bid information at the
42663 time, and the Government had all the bid information at the time. Was not the largest amount involved in this particular transaction for delivery at Los Angeles?

A. I can't tell you now without looking up the records on the thing.

Q. In Respondents' Exhibit 3443-G, did you not show there that the Monolith bid at Los Angeles bid was lower than yours?

A. We show that California is lower on this document here.

Q. You mean by one-half a cent delivered by truck?

A. Yes.

Q. What about by rail? You were 7 cents higher, were you not, according to your own figures?

A. No; we are 11 cents low, aren't we?

Q. I am talking about this comparison here on paper, $1.72-55 by rail against $1.65-35 by rail.

A. I am making the comparison here.

Q. Why compare cloth and paper?

Now, is it not a fact that this correspondence shows that they wanted to use the cement at Los Angeles, Compton, Glendale, and Roscoe?

A. Yes.

Q. And is it not a fact that your statement was based upon a comparison of prices at Los Angeles, Santa Barbara, Ventura, San Bernardino, Riverside, Calexico, Santa Ana, and San Diego?

A. Things are so intricate right now for me to 42664 figure that out, Mr. Wooden.

Q. Well, you included those points in your answer, did you not?

A. Yes.

Q. And you were not comparing the same points, except for Los Angeles, where they wanted to use the cement; is not that right?

A. We were comparing the points, I suppose, that were enumerated in this bid, what we thought this bid would cover.

Q. But you did not know where it was to be used until you wrote and found out that the bid was awarded; did you?

A. Yes.

Q. And you found out that they included those four points that I named, and you compared only one of those four points with the Monolith bid; is that right?

A. That appears so.

42666 Washington, D. C.
Saturday, June 29, 1940.

42668 JAMES A. BLAIR thereupon resumed the stand and testified further as follows:

42669 *Cross-Examination (Continued) By Mr. Wooden.*

Q. Mr. Blair, I am showing you a set of papers that you brought here with you, and which Mr. 42670 Davis just turned over to me. Will you state if those papers relate to this bid that is shown on the invitation, or shown on the bid which is on the first sheet of the collection?

A. I would say that they relate to this bid.

By Mr. Wooden:

Q. That is the company's complete file on that bid?

42671 A. Yes.

Mr. Wooden: I would like to have the papers marked for identification as Commission's Exhibit 3262-A to-J.

(The documents were marked for identification "Commission's Exhibit 3262-A to 3262-J.")

By Mr. Wooden:

Q. Mr. Blair, referring now to paragraph numbered 66 of your stipulated testimony, and also paragraph 67, in general, when you say that, as you do in paragraph 66, your company has never had or enforced any definition of a dealer, except possibly during the Code period, what period do you cover by the "Code period"?

A. I think the Code period was December, 1933, to June, 1935.

Q. Well, do you mean to say that during that period you did have and enforced some definition of a dealer?

A. Not any more than we do now.

Q. What did you mean by "except possibly during the Code period"?

A. Well, the Code made it more restricted than we do now.

Q. Well, you say it made it more restricted, and you

abided by it, and yet you said it was not any more restricted than now. How is that?

A. I don't think we had any more occasion to enforce our list of dealers during the Code than we do now.

42672 Q. Well, during the Code period, did you have a definition—

A. In our price lists, we did.

Q. In your what?

A. In our price lists.

Q. And what was that taken from?

A. I suppose that was taken from the Code Authority, or from some of our competitors' price lists.

42673 Q. Can you not tell us where you got your definition "dealer" that you put on your price lists, without supposing where you got it?

A. I can't tell you now. That is a good many years ago. The thing is in the record now.

Q. How long did you keep the definition of your dealer on your price lists?

A. I think until June, 1935, perhaps—not after that.

Q. Were you aware that the Code, the N. R. A. Code provision regarding the definition of dealers and classification of business between dealers and manufacturers was suspended within a month or so after the Code was adopted in December, 1933?

A. No; I was not aware of it.

Q. You continued the use of a definition of a dealer at least until June, 1935?

Mr. Davis: Just a moment.

A. I think that is correct.

42674 Q. Prior to the N. R. A. Code, did you have any definition of a dealer?

A. We had no particular definition of a dealer.

Q. What do you mean by "no particular definition"?

A. Well, if anybody made application to handle our cement, we sized them up in each individual case to see whether we wanted them for a dealer or not.

Q. Well, is it not a fact that dealers' associations had a standard definition of what was a dealer that they made known to you?

A. They possibly made it known to us, but we did not follow that. We used our own judgment on these things.

Q. Do you mean to say that your policy was contrary to the definition of a dealer that the dealers' associations made known to you?

A. Our policy was our own.

Q. Was it in accordance with the definition of a dealer that the dealers' associations made known to you?

A. I don't think we paid any attention to the
42675 dealers' association as to that. As I say, we used our own judgment in whom we appointed as dealers.

Q. Did the dealers' associations make known to you who they thought were entitled to recognition as dealers?

A. I think they did.

Q. And do you mean to say that you always acted in a way that was contrary to what the dealers' associations made known to you?

A. It was—we used our own judgment in those things, and determined whether a man was a good man to represent us. That was the basis on which we took on a dealer.

Q. Very frequently, at any rate, your own judgment coincided with the judgment of the dealers' associations, did it not?

A. I don't know whether it did or not.

Q. You never paid any attention to whether it did or not?

A. No.

Q. You never paid any attention to the dealers' associations telling you what or who was a dealer?

A. Well, we might have listened to them but I don't think that that changed our judgment any.

Q. Were you not concerned with retaining the good will of the dealers who were in the dealers' associations?

A. We were concerned with retaining the good will of all dealers, whether they were in the associations or not.

Q. And most of them were in the associations?

42676 A. I don't know whether there were or not.

Q. Well, were you not concerned with retaining the good will of the dealers who were organized into the associations?

A. We were concerned with the good will of all dealers, whether they were in the associations or not.

Q. Well, you knew, did you not, that the dealers' asso-

ciations included some very important buyers and customers of yours?

A. Oh, yes.

Q. And were you not concerned with whether or not you made your policy regarding dealers in harmony with the wishes of the dealers' associations, which included many of your good customers?

A. We tried to get along with everybody, you might say.

Q. You tried to get along with the dealers' associations?

A. We tried to get along with the dealers' associations and those who were outside the associations.

Q. Did not the dealers' associations have a definition of a dealer that they made known to you, which was practically the same as the definition of a dealer that was put into the N. R. A. Code?

A. Well, I can't recall what those definitions of the associations were.

Q. You recall what it was under the Code, do you?

A. Generally speaking; yes.

Q. Can you say whether or not the Code defini-
42677 tion of a dealer differed substantially from what your own standard had been prior thereto?

A. I don't think our standard differed a great deal.

Q. Can you mention any respect in which it did differ?

A. Oh, I think that the Code might insist on dealers carrying a full line of building materials, or something like that, while we might appoint a man as a dealer who did not carry a full line. That would be the only distinction I can recall.

Q. That matter of whether or not it is a full line is largely a matter of opinion.

A. Yes.

Q. And judgment.

A. Yes.

Q. Is it your testimony that your company has never had any understanding with any dealers' associations as to what constituted a dealer?

A. I don't know of any understanding we had.

By Mr. Wooden:

Q. Can you tell us to what extent your policy in recog-

nizing what constituted a dealer was in line with
42678 the standard which the dealers' associations made known to you?

A. Well, I would say that if the dealer was making application, each dealer was considered on his own merits. If the dealers' associations insisted or stated that they wanted dealers to carry full lines of building materials, and all such things as that, we didn't recognize that.

Q. Well, was your policy, the standard of what constituted a dealer, in harmony with or in opposition to what the dealers' associations made known to you?

A. I think our policy was to get along with everybody that we could. That is just all I can answer on that question.

42679 Mr. Wooden: I think Mr. Davis' point is well taken. I am confining this question to the associations' policies that were made known to this company, through the witness.

Trial Examiner Norwood: Go ahead.

A. Well, I think I have answered that, that we decided each case on its individual merits.

By Mr. Wooden:

Q. Can't you tell me whether or not, in general, your policy was in harmony with the standard of what constituted a dealer, as made known to you by dealers' associations?

A. Some of the points of the associations might be agreeable to us and some might not.

Q. In general, were not your standards as to what constituted a dealer in harmony with what the dealers' associations in your territory made known to you?

A. Some would be in harmony and perhaps others might not. I don't recall where they differed.

Q. You say some would be and perhaps others would not. Generally speaking, was it not in harmony?

A. I think that would be right—the main points of it.

Q. Now, referring to paragraph 67 of your stipulated testimony, did not your policy with regard to what
42680 classes of trade you would sell direct and what classes you would sell through dealers depend to some extent upon what dealers' associations made known to you?

A. There might be a suggestion, but I think the deci-

sion was up to the management, whether we wanted to follow that or not.

Q. The dealers' associations did make known to you, did they not, what classes of trade they thought they should be permitted to handle?

A. Yes, they did.

Q. And, in general, your policy of selling certain classes of trade was in harmony with the dealers' associations desires?

A. There were certain classes and there were certain classes that we were in opposition to.

Q. Will you specify those two classes?

A. Well, dealers wanted to continue to sell to paving jobs. The mill or manufacturers sold paving direct. Now, there is a difference.

Q. Well, generally speaking, I suppose the dealers wanted as much of the business as they could possibly get?

A. Yes.

Q. And the manufacturers wanted to sell direct as much as they could?

A. Not necessarily, no.

Q. You say in paragraph 67 that the company had always sold direct to dealers, to agencies of the
42681 Federal Government, to the State of California, and to certain Southern California counties and municipalities for big buys. When you said that you understood it, you had personal knowledge, had you not, or were you depending on some other information than your own?

Mr. Davis: I object to that. It is apparent that the witness could not know what the policies were—what the policies were prior to the time that he came with the company.

Mr. Wooden: Well, I will confine it.

Mr. Davis: Then, I will withdraw the objection.

A. We have sold the parties you mentioned very few large buys.

By Mr. Wooden:

Q. You have sold those classes of direct ever since you have been with the company?

A. Yes; I will state that in the same manner.

Q. Were there any agencies of the Federal Government prior to 1933 that you did not sell direct?

A. Federal agencies prior to 1933?

Q. Well, make it prior to the N.R.A. Code.

A. I don't remember any that we did not sell direct, unless it was on small lots.

Q. You mean less than carload lots?

A. Less than carload lots, or that type of business we could not serve very well.

42682 Q. Then after the N.R.A. Code, were there some agencies of the Federal Government that you did not sell direct?

A. I believe there were.

Q. What were they?

A. Well, agencies buying for local improvements, which had been served by dealer trade before.

Q. You mean such things as the W.P.A.?

A. Well, the W.P.A., school work, swimming pools, and work of that nature.

Q. You mean work of an emergency relief nature?

A. We have sold some emergency relief nature work direct, I believe.

Q. I am talking about this Code period, now. Prior to that time I understood you sold direct to all branches of the Federal Government.

A. Well, not sold to all branches, but we did sell to some.

Q. Well, you told me you could not tell me any that you did not sell to.

A. I could not, no.

Q. Then, what I am getting at is that during the Code period you began selling certain jobs through dealers, although it was Federal Government projects and Federal Government money that was being spent. That is right, is it not?

A. Yes, sir.

Q. And many of those jobs were of considerable
42683 size and considerable quantities?

A. A few were in large quantities. I don't think many.

Q. But most, if not all, were carload business.

A. No, not necessarily; no.

Q. Was not the bulk of them carload business?

A. No, I don't think so. There may have been a few exceptions, in large quantities.

Q. You talk about school houses and swimming pools and things of that kind. Was that carload business?

A. It could have been sold on carload business.

Q. It not only could be, but it was; was it not?

A. Do you mean through dealers?

Q. It was carload business.

A. All right. It was carload business.

Q. All right. You agree that it was?

A. Part of it was; yes.

Q. Was not a good deal of it shipped direct from the mill to the job?

A. By truck; yes.

Q. In other words, it did not go through the dealers' warehouse?

A. No.

Q. Then, did your policy in respect to selling such types of business change after the Code?

A. I believe it changed even during the Code.

42684 Q. Will you state the nature and extent of the change?

A. N.R.A. or W.P.A. work that had been sold by dealers or through dealers was gradually taken away from the dealers and sold by the mills direct.

Q. Gradually?

A. Yes.

Q. Do you mean to say gradually during the Code period?

A. I think it was during the Code period, or shortly afterwards.

Q. Do you mean to say that after June, 1935, you sold direct to the Federal Government the types of business that you had previously, prior to that date, sold through dealers?

A. I think that is correct.

Q. And did it represent a complete change in your policy, or, as you might say, just exceptions to it?

A. I believe it represented a gradual shifting away from the previous policy.

Q. Is it your testimony that after June, 1935, your company sold direct to the Federal Government for emergency relief projects?

A. Without verifying the date of these transactions, I will say that we did sell these emergency relief operations.

Q. Direct?

A. Yes.

Q. Now, Mr. Blair, is it not a fact that after
42685 after June, 1935, and during 1936, your company decided not to bid on many invitations that called for bids on relief projects, invitations coming to you from the Procurement Division of the Federal Government?

A. Well, as I said, without verifying the date, I couldn't tell you when the period changed.

Trial Examiner Norwood: Read that answer, please.

(Answer read.)

Trial Examiner Norwood: But there was a change, was there?

The Witness: Yes.

By Mr. Wooden:

Q. I show you a bunch of papers that you brought here, and will ask you to state how many cases there are among that collection of papers where, subsequent to June, 1935, and during 1936, you received invitations to bid and did not bid?

42686 A. I find one there on which we made a bid.

Trial Examiner Norwood: Objection overruled.

By Mr. Wooden:

Q. How many in that collection do you find on which you did not make a bid?

A. Well, I have not counted them.

Q. Well, count them, please, and tell us.

A. Well, I would make a rough count. Would that be satisfactory?

Q. No; it is not such a big undertaking that you cannot give us an exact count.

A. Some of these things in here are duplicated, and I might get them in twice. That is the point.

Q. Take care not to do that.

42687 A. That is not a bid we would make, anywhow (indicating). That is acid-proof cement. We didn't even manufacture that.

By Mr. Wooden:

Q. All right. Just count the cases where you were invited to bid and did not bid.

A. You see, here are two of the same type (indicating). If I have counted correctly, I think there are about 47 that we did not bid on.

Q. And they are all subsequent to June, 1935, and during 1936; are they not?

A. Yes. There are some things in there that we would normally bid on.

42688 Q. And do not practically all of those 47 cases involve more than carload business?

A. Well, there are some involving full truckload business or full carload business.

Q. I mean, are there not many of them in thousand sacks?

A. Well, there are 360 sacks.

Q. Yss; but are there not some of them in thousands of sacks?

A. Yes.

Q. Here is one of 24,000 sacks; is that right?

A. Yes.

Q. Here is another 16,000 sacks; is that right?

A. Yes.

Q. Here is one of 500 sacks.

A. Yes.

Q. Here is one of 150 barrels.

A. Yes.

Q. 360 sacks.

A. Well, that is not a full carload here.

Q. A thousand sacks, 437 sacks.

A. That is not a full carload.

Mr. Davis: May it appear that they are not mentioning all of them, but just selecting some now and then.

Mr. Wooden: Oh, yes.

By Mr. Wooden:

42689 Q. Here are 2,000 sacks or 500 barrels. That is right, is it not.

A. Here is one of 500 sacks.

Q. Five hundred sacks.

A. That is not a carload.

Q. You make deliveries to trucks in less than carload lots, do you not?

A. Well, they wouldn't have been even a truckload. An order like that, you couldn't fill from the mill, unless they made it two 4's, or —

Q. Here is one of 20,000 sacks or 5,000 barrels. Is that whole collection for delivery in Los Angeles?

A. No; they deliver it anywhere—most points in Southern California.

Q. There were many of them at Los Angeles, were there not?

A. Somewhere in Los Angeles, yes.

Mr. Davis: And I think some were in Arizona.

Mr. Wooden: Possibly.

By Mr. Wooden:

Q. Do you say that your policy in not bidding on those invitations had no relationship of the wishes of the dealer trade as expressed to you?

A. I think that was—

Q. By the dealers' associations?

A. I think that was in relation to the dealers' wishes.

Q. You think it was?

42690 A. And to our own judgment.

Q. You say that your policy was not the result of any arrangement or understanding with dealers' associations?

A. I don't think there was any arrangement about it. We possibly felt, ourselves, that that was the class of business that dealers should serve.

Q. Do you say it was not the result of any understanding with dealers' associations?

A. I couldn't verify that now.

Q. Well, what do you mean by saying you cannot do it now?

A. I can't recall whether we had any arrangement with dealers' associations. I don't think we did. We decided these things. The dealers referred to us that that was the class of business that they had normally sold in the past, and that they should sell it. We possibly agreed with them.

Q. It was not a type of business and it was not a type of customer that they had formerly sold?

Mr. Wooden: Meaning by "they," the dealers.

A. Well, the dealers have sold the Government before.

By Mr. Wooden:

42691 Q. They have not sold the Government on carload business, have they, before?

A. I think some of them.

Q. Except in unusual circumstances.

A. Yes.

Q. Well, at any rate, it was the type of customer that you had always sold before.

A. This is a new type of customer entirely, I think—these relief agencies.

Q. Still, it was a federal relief agency, was it not?

A. Yes.

Q. What was the difference in the type of customer? It was still the Federal Government, was it not?

A. Yes.

Q. Well, did I understand you to say that your company had never had any understanding with dealers' associations to the effect that you would not bid on this type of business?

A. I would say that; yes. We had no understanding. We may have agreed with them on some of it, but we did not bind ourselves by any dealers' association.

Q. What part did you agree on?

A. We agreed that this type of work here was work—was business that the dealers normally sold, and should be entitled to sell.

Q. You agreed with whom?

42692 Mr. Davis: If the Court please, I object to the question, on the ground that Mr. Wooden is attempting to place an interpretation on the word "agreed," that it is apparent from the witness' testimony that he did not place upon it himself.

Trial Examiner Norwood: He is explaining that. I think he has a right to do that.

Mr. Davis: We can all agree that this is Saturday morning, but that does not mean it is proper in the form of cross-examination.

Trial Examiner Norwood: The objection is overruled. Read the question.

(Question read.)

A. We agreed with ourselves. The company felt that the dealers were entitled to retain or serve that kind of business.

By Mr. Wooden:

Q. You do not say that you agreed with the dealers?

A. We do not have any agreement with dealers.

Q. Or with dealers' associations?

A. Or with dealers' associations.

Q. When you say "agreement," you mean you had no understanding?

A. No signed agreement, or anything like that—no binding agreement.

Q. When you say you had no agreement, you re-

42693 strict yourself to signed or written agreements. Did you have an understanding? That is what I am getting at.

A. We had a policy of letting dealers sell that type of business. That is the best I can explain it for you.

Trial Examiner Norwood: Did you talk over with the dealers or any representatives the matter of selling direct and come to some common conclusion about it?

42694 The Witness: We had interviews with dealers, in which they represented that they were entitled to serve that business, and we possibly felt that they were.

By Mr. Wooden:

Q. Felt possibly what?

A. That they were entitled to serve that type of business.

Trial Examiner Norwood: Well, did you then tell them that you felt that way about it?

The Witness: I don't know that we did. We simply did not bid on these items.

(COM. EX. 3262-A to 3262-J was offered and received in evidence.)

42696 By Mr. Wooden:

Q. Mr. Blair, do you recall bids made by Phoenix, Ariz., dealers along about July, 1936, for 3,000 barrels, on which some dealer or dealers bid on your brand of cement, and some dealer or dealers bid on other brands of cement, to the Federal Government?

42697 A. I don't recall anything, unless I saw some memorandum concerning it.

By Mr. Wooden:

Q. Don't you recall seeing a memorandum of the sort I have described?

A. I saw something that Mr. MacIntyre and I talked about, and that is what we have been looking up right now.

Mr. Wooden: I would like to serve notice on Mr. Davis to produce the tabulation which has been referred to.

Mr. Davis: I recall the document; that is, in general, that there was such a document. I do not know what was in it, or who it was prepared by, or whether it is at all admissible in evidence under any theory. It was among the documents that we reviewed yesterday morning with Mr. MacIntyre. I remember his asking Mr. Blair a question about it. It is not here. It is apparently among some of the papers that we have not found. It is also apparent that we will have to go on on Monday; so in the interim I will look it up and see what it is, and if it is what

42698 Mr. MacIntyre says it is, I do not think I shall have any objection to producing it.

Trial Examiner Norwood: Proceed.

Mr. Wooden: I understand your previous objection was made on the idea that it was some other document.

Mr. Davis: That is right. If it is the document that Mr. MacIntyre says it is, I will not object. My objections before were addressed to something else.

Trial Examiner Norwood: Yes. Go ahead.

By Mr. Wooden:

Q. Referring now to paragraph numbered 71 of your stipulated testimony, Mr. Blair, your discounts have been the same, have they not, as the discount terms of your competitors?

A. Yes; they have.

Q. Has your company ever initiated a change in discount, or has it merely followed changes made by others?

A. We followed the changes made by competitors.

Q. Referring now to the paragraph numbered 72 of your stipulated testimony, was it not the general practice of your company prior to July, 1937, not to prepay the freight, but to allow the customers to deduct the amount of freight from the invoice?

A. In California, I think we prepaid the freight for the last 7 years. In Arizona we bill them a destination price, and let the customer take the freight off—send in his freight bill.

Q. And the customer paid it to the railroad?

A. And deducted it from his payment to us.

Q. And the goods were consigned to the customer?

A. Yes.

Q. Now, you say that California, for the last seven years, you prepaid all freight?

A. Yes.

Q. How do you account for the difference in practice as between California and Arizona?

A. Well, in California you have to comply with the State sales tax. That is the reason for it—principally an accounting matter.

Q. You say that is the only reason for prepaying the freight in California?

A. That is as far as I see it.

Q. Now, referring to the paragraph numbered 74 of your stipulated testimony, you handle these things against the railroads for the benefit and account of your consignee?

A. Yes.

42700 A. We handle them for the account of our customers, when it is convenient to handle them, if he cannot handle them, himself.

By Mr. Wooden:

Q. And where you did that in some few cases you have assumed the responsibility for damage in transit, where the recovery against the carrier has been delayed or unsuccessful. Have you done that as a matter of policy, to promote good will with the customer?

A. We handle those claims against the railroad for damage as an accommodation to our customers and for his good will, too.

Q. I mean not merely handling them but where you have made good on damage in transit to the customer, where you were unsuccessful in getting it from the railroad, was that on account of promoting good will with the customer?

42701 A. Yes.

42702 Q. Referring now to the paragraph numbered 76 of your stipulated testimony, can you say on what percentage of your shipments you made delivery within 15-day period, excluding those large shipments to federal projects?

A. I would say 90 percent of our shipments are made within a 15-day period. It is a day-to-day proposition, most of it.

Q. Do you mean to say that 10 percent of your dealer shipments are made after 15 days?

42703 A. Practically all of our dealer business is sold on a day-to-day basis, and there is no need to wait 15 days to make a shipment.

Q. Now, referring to the paragraph numbered 77, where you use the term "Code period," in your stipulated testimony, is that the period which began December, 1933, and ended in June, 1935?

A. That is the period I have in mind.

Q. And did you, during that period, limit contracts for period requirements to quarterly periods?

42704 A. I don't recall the enforcing of any rule of that kind. I don't think we had any occasion to.

By Mr. Wooden:

Q. Is it your testimony that purchasers for period requirements can buy, and have been able to buy, freely from

your company, without regard to the periods for which they wanted to buy?

A. I would say yes, they can buy freely from us.

Q. Has that always been true?

A. I think always.

Q. Except during the Code period.

A. I don't think we had any occasion during the Code period to enforce any of the requirements.

Q. Except during the Code period, have period requirements buyers been free to buy from your company without regard to the length of the period?

A. They have been free to buy; yes.

Q. You imposed no restrictions as to the length or as to the period of time for their period requirements, except during the Code period?

A. Well, within a reasonable time, to be decided between the parties.

42705 Q. What do you consider a reasonable time?

A. Well, with some people six months. They find that reasonable, and some nine.

Q. You find that with certain classes of trade six months might be reasonable?

A. Yes.

Q. What are those classes of trade?

A. Well, for instance, pipe manufacturing for large contracts that extend over a period.

Q. That would fall in what period?

A. Well, we will say, the six months' period. That is just about the best description that I can give of a thing of that kind.

Q. What was the nine months; what type of trade would come in there?

A. Well, you might sell the City of Los Angeles on six months' period or a nine months' period. Is that a suitable answer?

Q. That gives me some idea of what you have in mind. Has not the policy and practice of your company with regard to selling for period requirements been the same as that of your competitors?

A. No, not necessarily.

Q. What do you mean by "not necessarily"?

A. Well, the City of Los Angeles might call for
42706 a bid, six months' supply, with an option to extend that for a year. We might extend the option, while our competitors would not, or vice versa.

Q. When you get out into private purchasers, such as pipe manufacturers, has your policy been the same as that of your competitors?

A. I don't know what their policy is in a case of that kind.

Q. You do not know that they have a policy or a rule that they follow?

A. I think that their policy would be to decide the thing on its individual basis.

Q. Has the pipe manufacturer, for instance, been able to buy from your company for requirements longer than six months?

A. I don't think any have ever asked for that privilege, or even for six months.

Q. Under the policy of your company, would there be anything to interfere with the pipe manufacturer buying his requirements for more than six months?

A. Well, it would have to be decided on the case as it came up.

Q. Has there been anything in your policy that would prevent a pipe manufacturer from buying his requirements for longer than six months?

A. It would depend upon market conditions and other conditions in the market at the time he made his ap-
42707 plication for such consideration.

Q. You cannot tell whether your policy would have prevented a pipe manufacturer from buying his requirements for longer than six months?

A. No; these things would be decided as they developed.

Q. In other words, it might or might not have been allowed?

A. It might not have been allowed, and it might have been.

Q. Did you have anything to do with the preparation of the replies made by your company to the Clark-Burns questionnaire?

A. I think I made some suggestions.

Q. Who did prepare them, other than yourself?

A. I don't know who finally made the preparation, if it was ever finally done.

Q. You reviewed the answers before the questionnaire was submitted, don't you?

A. I don't know whether it was finally submitted or not.

Q. Well, you made some suggestions, you said. What did you do?

A. Well, I made what I thought were suitable answers to the questions that were propounded.

Q. In other words, you did answer the questions in the first instance; is that what you mean?

A. Of our own people?

Q. Yes; and then you turned them over to them for further handling.

42708 A. Yes.

Q. Did you do all of the answering to the questions in that first instance?

A. No; not all of them.

Q. What part did you answer?

A. I haven't seen the thing since that was done, and I couldn't tell you what questions were on it.

Q. Can you name anyone else in the organization that formulated answers to the questions in the same manner as you did?

A. Well, I think practically every one of the organization who might be an executive had a hand in the formulation of the replies.

Q. Did you go over the answers made by others in the organization?

A. No; I think that I was one of the first to put my suggestions on, and others made corrections or improvements or changes or whatever it was.

Q. Is it your testimony that your company has not employed the basing-point method or system of quoting prices in any of its business?

A. We don't claim to use the basing-point system.

Q. Do you claim not to?

A. We claim that we make destination prices. That is the answer to it.

42709 A. Our prices are destination prices both in Arizona and California.

By Mr. Wooden:

Q. I know that, but do you claim that your company has not employed the basing-point method or system of quoting prices?

A. That is my understanding of the policy of the company.

Q. It is what that they have not employed it?

A. That they have not employed a basing-point system.

Q. Is that your own personal position also?
A. I would take that position, too.
Q. You would?
A. Yes.
Q. Showing you Commission's Exhibit 967-10-H to 10-W, inclusive—
Mr. Davis: May I look at those before you submit them to the witness, Mr. Wooden?
Mr. Wooden: Yes (handing documents to Mr. Davis).
Mr. Davis: What is the state of the record?
(Question read.)

By Mr. Wooden:

42710 Q. That is the answer made by your company to the Clark-Burns questionnaire, is it not?

Mr. Davis: Just a moment. That is objected to on the ground that the witness is not qualified to make an answer. He has stated that he has not seen the questionnaire since he made his pencil notes on it, before it was sent in, and he did not know whether or not it had ever been sent in. Now, if he wants him to identify the signature on it, I would not make any objection.

Trial Examiner Norwood: Well, did he have something to do with the making of it?

Mr. Wooden: He has testified he did.

Trial Examiner Norwood: Objection overruled.

Mr. Wooden: And he did not say anything about pencil notes, that I recall.

Trial Examiner Norwood: Objection overruled.

A. I said I offered preliminary suggestions, didn't I, or words to that effect.

Mr. Davis: Oh, I am sorry.

A. Well, I can say that I never saw the finished article, and I don't know whether these answers reflect my opinions or not.

By Mr. Wooden:

Q. To whom did you turn over your preliminary answers?

A. Well, my answers were turned over to the sales manager.

42711 Q. Who was that?

A. To the sales manager.

Q. Who was that?

A. Mr. Dartt.

Q. And you do not know what he did with them?

A. I assume that he took them up with the management, and discussed the whole problem with them.

Q. Well, this is in evidence as the answer made by your company, and I would like to ask you, in view of your statement that your company has not employed the basing point system, to explain why, if that is true, in this questionaire the answer was made that Colton was a basing point.

A. Well, this has been changed from the original, apparently. It was originally written as "No."

Q. Yes.

A. It has been changed to "Yes."

Q. Yes.

A. What is it you are asking me now?

Q. Why the answer "Yes" was made to that question.

Mr. Davis: I object to it, on the ground that the witness is not qualified to answer as to what was in the minds of the executives who filed the questionnaire, at the time they filed it.

Trial Examiner Norwood: Objection sustained.

Mr. Wooden: He testified a few moments ago—

42712 Trial Examiner Norwood: The questionnaire is in evidence and it shows whatever it shows.

Mr. Davis: Yes; it shows whatever it shows.

Trial Examiner Norwood: If the witness will adopt any of those answers as the ones he suggested for it, that is all right. If he did not, you may ask him what he understood about it, and whether he considered that in making his previous answers.

By Mr. Wooden:

Q. Tell us how you answered that question in the preliminary answers that you submitted?

A. Well, I can't tell without seeing the pencil memorandum that I made.

Q. You are sure now it was the pencil memorandum?

A. Absolutely.

Q. Did you write the answers on a form of the questionnaire or on a separate—

A. It was on a form of the questionnaire, just like this, and my memorandas were made in pencil,—those that I did submit.

Q. You do not know now whether you answered that question "yes" or "no"?

A. I don't know.

Q. In your notes.

A. No.

42713 Q. Directing your attention to question No. 8 on Exhibit 976-10-J, did you make the answer that was made?

A. I don't know without seeing my pencil memorandum. This is a typewritten statement.

Q. Yes.

A. And none of my work on that particular statement was typewritten; so I can't connect any part of my answers up with this.

Trial Examiner Norwood: You don't recall any of those answers?

The Witness: No, sir.

Trial Examiner Norwood: To the extent of being able to verify them if you saw them there.

The Witness: No; not at all.

By Mr. Wooden:

Q. Directing your attention to Exhibit 976-10-V, can you tell me whether or not there were approximately eight reductions in your base price since January 1, 1925, as there stated?

A. I can't tell you, because I don't have any 1925 records with me.

Q. Can you tell us what the base price referred to was?

A. I can't tell you anything regarding this statement, because my memorandums were on the preliminary statement, and the whole thing might have been changed from what I stated on my preliminary statement.

42714 Q. Referring to Exhibit 976-10-W, can you tell us whether there were approximately two increases in base price made by the mills producing at your basing point?

A. Now, you are talking about 1925, and we have no records dealing with the 1925 business here.

Q. This was since 1925.

A. Well, all right.

Q. That would be 1926.

A. I don't have any records for 1926 here.

Q. From your knowledge of the company's business, were there approximately two increases in your base price after January, 1925?

A. I can't verify any of that statement at all, Mr. Wooden, because I don't have the records.

Q. Is it not a fact that Colton and Crestmore have been published as basing points in the Engineering News Record?

A. I don't know—I have not seen that article.

Q. As a matter of fact, the changes in base price at Colton were changes initiated by the Riverside Company, were they not?

Mr. Davis: Just a moment. I object. It is asking for a state of facts not in evidence, unless Counsel wants to define what he means by "base price." I don't think there is any evidence—

Trial Examiner Norwood: Objection sustained.

42715 By Mr. Wooden:

Q. Do you wish to stand on your previous testimony that your company never employed the basing-point system in view of the answers to the questionnaire that I have shown you?

Mr. Davis: Just a moment. If the Court please, I object to the question on the ground that it is not a correct statement—

Trial Examiner Norwood: Objection sustained.

Mr. Davis: —of the witness' testimony.

Trial Examiner Norwood: Sustained. I think we have gone over that ground.

By Mr. Wooden:

Q. I show you Commission's Exhibit 971-23-A and B, which is a letter from Warren H. Leonard, of the Riverside Company, to Dr. J. M. Clark. Directing your attention to the last paragraph, do you agree that there was a mill base of $1.72 plus freight except for the absorptions in the metropolitan area that is referred to in that paragraph?

Mr. Davis: Just a moment, before you answer, if I may read that thing that the question is directed to.

Trial Examiner Norwood: Yes.

Mr. Davis: Object to the question on the ground that it calls for the conclusion of the witness as to the intention and agreement of a competitor, which he obviously cannot express.

42716 Trial Examiner Norwood: I think it is permissible on cross-examination for the Examiner to call

the attention of the witness to other testimony and as if he agrees with it or if he disputes it.

Mr. Davis: If the testimony goes to a fact, of course, that is proper, but where he asks him if he agrees with a statement that Riverside did certain acts and had certain beliefs and intentions at a certain time, obviously he can't express—he can't say that he agrees with it or that he does not agree with it.

Trial Examiner Norwood: I will sustain the objection.

Mr. Davis: It is not a Colton letter.

Trial Examiner Norwood: I think it is a matter to be argued to the Commission. You may ask the witness about the effect of any of those things; if the facts are different from other facts, then call the attention of the Commission to it, other facts or other evidence.

By Mr. Wooden:

Q. Referring to the document to which I just called your attention, was there after July, 1930, a mill base of $1.72 in effect at Colton and Crestmore, and were prices made on that mill base plus freight except for the absorptions of freight in zoned territory in Southern California?

Mr. Davis: Just a moment. I object to it on the ground that it is unintelligible to the witness because 42737 there is no definition of the words "mill base."

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Objection overruled.

Answer it.

A. Well, I was—give me the gist of that question again?

Trial Examiner Norwood: Read it.

(Question read.)

Mr. Davis: If the witness knows.

Trial Examiner Norwood: Yes; if you know that.

A. I don't know whether that is a fact or not. We published a price list that was to meet prices established by competitors, and I can't say anything about the basing point in relation to this.

By Mr. Wooden:

Q. Well, didn't Riverside publish some prices based on Crestmore and Colton base?

Mr. Davis: Objected to as calling for the conclusion of the witness. I understand that price lists of Riverside

showing what their lists show are in evidence. They are the best evidence. Object to also on the ground that it is not the best evidence.

Trial Examiner Norwood: Overrule the objection. If he knows.

Mr. Davis: Also on the ground that it is a con-
42718 clusion of the witness, because he cannot state his conclusion whether the prices stated are made on any basing point—

Trial Examiner Norwood: Read the question.

(Question read.)

A. I don't know what they published them on. If they published a price list, we met their prices in the territory which we served.

By Mr. Wooden:

Q. In other words, you don't know whether you were quoting and selling on a mill base at Colton-Crestmore, or not?

Mr. Davis: Just a moment. Object to the question on the ground that it relates to a period so remote that it has nothing to do with this case.

Trial Examiner Norwood: Overruled.

Mr. Davis: 1930.

A. I think I have explained it, Mr. Wooden, that we met our competition in the field.

Q. But you don't know whether or not the price lists of the Riverside Company were based on a Crestmore-Colton base or not?

A. I can't—

42719 Mr. Davis: Just a minute. I assume that what the Counsel is referring to is the price list of 1930, that this interrogation relates to, and I assume that the witness will consider that.

Trial Examiner Norwood: Go ahead.

A. Well, I have lost the trend of your question there.

Trial Examiner Norwood: Read the question.

(Question read.)

A. I can't say. I can't speak for the Riverside Company at all.

By Mr. Wooden:

Q. Then you don't know, as a matter of fact whether there was a basing-point system employed in the construction of that price list?

A. I don't know, no.

42721

Washington, D. C.,
Monday, July 1, 1940.

JAMES A. BLAIR thereupon resumed the stand and testified further as follows:

42724 *Cross-Examination by Mr. Wooden (Resumed).*

Q. You have told us, Mr. Blair, that there are some destinations in Arizona where the destination price is the same, but where the freight rates from Colton to those destinations are different; is that correct?

A. Yes; in the case of Nogales. I think that is one in point.

Q. Are there not some destinations in Arizona, or elsewhere, where the destination prices are different, but where your mill net is the same?

A. We have the same mill nets in the Phoenix area; where we have blanket rates, but when you get be-
42725 yond the point where there is a freight disadvantage to us, we have a lower mill net, I believe.

Q. Are there not some destinations where the rate varies, but where your mill net remains the same?

A. There are some destinations in Arizona, where the price varies, but the mill net is the same?

Q. Yes.

A. Yes; there are.

Q. Then, you have a constant mill net for some destinations which have a differing freight rate and a differing destination price?

A. Approximately the same mill net.

Q. Is it not exactly the same as to some of those destinations?

A. There might be a slight difference in the freight rate, which would throw it out by a fraction of a cent, I think.

Trial Examiner Norwood: You mean a difference in calculating the rate as between different parties?

The Witness: No; the rate might be 1.158 or 1.197, and you would have no odd fraction at the end of it. That is what I mean to say.

By Mr. Wooden:

Q. Aside from the adjustment of the fractions; that goes on in all of your calculations, does it not—the adjustment of fractions?

A. Yes, it does.

42726 Q. Aside from that, you have a constant mill base for some destinations, do you not?

A. Almost a constant mill base.

Q. And on a dollars and cents per barrel basis, don't you have a constant mill base for some destinations and a different delivered price?

A. I would think so, yes.

Q. I show you Commission's Exhibit 277-MM, a copy of letter from your Mr. Duque to The Cement Institute, of September 10, 1935. He speaks of basing quotations in that particular case "on the normal mill base we receive on shipments made to dealers in Southern California, Arizona and Nevada." Do you understand that the normal mill base referred to there is the same thing as this constant mill base that I was just asking you about?

A. Well, if our average mill net in Arizona at this time was, we will say, $1.50, the price on this cement was built up, I think from $1.50. That is what I think that letter refers to.

42727 By Mr. Wooden:

Q. Have you not had a normal mill base in cents which was a constant mill base applicable to varying destination prices?

A. We receive a different mill return on certain shipments into Arizona when we go over to that point where we take a freight disadvantage.

Q. I know you receive a different net return, but to some destinations you have testified that you received a constant net return.

A. Well, I would say almost the same return.

Q. Have you not had a mill base at your Colton mill of $1.72 at one time?

A. We have had a price at Phoenix, and when you take the freight off to Phoenix that is possibly what it would return us at Colton.

Q. And for any points east of Phoenix, or some points east of Phoenix?

A. Yes; it would apply to some points east of Phoenix. I beg your pardon—west of Phoenix.

Mr. Davis: We have that map, if you want to get the figures accurately.

By Mr. Wooden:

Q. In other words, it is not as to points east of Phoenix, but it is as to points west of Phoenix?

42728 A. We do not get the same return when we get east of Phoenix, because we have a recomputation.

Q. What is the difference between your zone system in Southern California and some of your Arizona destination points, where the destination price is the same, but your freight rates from Colton to destination are different?

A. Well, in California we receive varying mill net returns.

Q. And you had at some points in Arizona—

42729 Q. (Continuing.) —a differing mill net, with the same delivered price.

A. I can't recall where that is.

Q. Well, Nogales and Phoenix was one case?

A. We have a normal mill return at Phoenix, but when we get down to Nogales, where there is a freight disadvantage against us, we have had to take a lower mill net return.

Q. Now, what is the difference between that situation represented by Nogales and Phoenix, and your situation in Southern California, where you have a common delivered price at various destinations, or within various zones, and varying mill nets, because of the difference in freight rates?

42730 The Witness: Let me have that question again?

Trial Examiner Norwood: Read it.

(Question read.)

Mr. Davis: I did not get the last part of that question.

(Question re-read.)

Trial Examiner Norwood: Can you not give us a direct answer to that question?

A. I do not see any great difference there.

By Mr. Wooden:

Q. What is the difference that you see, whether great or small?

A. The only difference is that we have more varying mill nets in California.

Q. Because you have more destinations?

A. And with different freight rates.

Q. More variation in freight, and therefore different freight charges, and more destinations also?

A. And more destinations also.

Q. Now, referring to the paragraph numbered 81 of your stipulated testimony, you say that Colton and Crestmore have equal commercial freight rates to practically all points. What exceptions are there involved in your statement "practically all points"?"

A. Well, Colton, from its mill to the town of
12731 Colton, would have lower rates than Crestmore would have to the town of Colton.

Q. Well, what other points, what other exceptions?

A. Some points that are close into the Crestmore mill, we might have a higher rate from our mill over to those points.

Q. Any other exceptions?

A. That is about the extent of it, I think.

Q. You have equal commercial freight rates, I understand, into Los Angeles.

A. We have.

Q. And when you go north, what is the situation?

A. I think it would be the same.

Q. And when you get into Arizona, it is the same from Colton and Crestmore?

A. We are the same to all points in Arizona.

Q. And New Mexico?

A. We don't go into New Mexico.

Q. Do you and Crestmore have the same rates into Nevada?

A. I think we have.

Q. Do you mean Victorville and Monolith enjoy having a higher rate from Colton and Crestmore?

A. Well, they have.

Q. But you do not know whether they enjoy it?

A. No; I don't know.

Q. You say there in paragraph 81 that they en-
12732 joy higher commercial freight rates by only certain differentials, and from 1934 to 1939 you say that the difference was two cents a hundredweight.

A. Yes.

Q. That is nearly eight cents a barrel, is it not?

A. About 7.6; I believe.

Q. About that.

A. Yes.
Q. Between seven and eight cents?
A. Yes.
Q. Don't you find six or seven cents a barrel quite an advantage or disadvantage, as the case may be, in competition?
A. Well, it is a help, yes.
Q. Or a burden, depending upon which side you are on?
A. Yes.
Q. You do not mean to say, then, that the freight rate situation is such as to account for identical delivered prices in your selling territory, do you?
A. No; I think it is the competitive conditions that make the prices. If they want to come in and get the business, they have to come in on the established prices.
Q. And when you get over into Arizona, as a matter of fact, Victorville and Monolith have different rates from Colton and Crestmore, have they not?
A. I think after we leave Yuma, you just get all
12733 about equal in Arizona. I can verify that by the map there, I believe. One station beyond Yuma I think we go in on the same basis to Arizona.
Q. Now, I am showing you Commission's Exhibit 1317-C, showing freight rates from various points. Is it not a fact that at Tucson the rate from Victorville to Tucson is 37 cents against 34 from Colton and Crestmore?
A. I thought we were talking about this where we all came in even.
Q. No, I am talking about where you do not come in even.
A. Oh!
Q. Does the map that you have brought here show rates from Victorville to Tucson?
12734 A. Yes, it does.
Q. And what were they?
A. Colton was 30½, El Paso 30½, Victorville 33½, and Monolith 34½.
Q. All right.
Now, have you the same information on your map for Nogales? What was the situation as to the Nogales rates from Victorville and Monolith as compared with Colton and Crestmore?
A. Colton has a rate of 32½, El Paso has 30½, Victorville has 35—

Q. You mean Victorville?

A. Victorville has 35; Monolith 36½.

Q. What was Victorville—35?

A. Victorville was 35 and Monolith was 36½.

Q. And what from Colton and Crestmore—32½?

A. 32½, and El Paso was 30½.

Q. Have you the same information for Globe?

A. Globe, Colton and Crestmore were 39½, El Paso 30½, Victorville 42½, and Monolith 43½.

Q. How about Bisbee?

A. Bisbee, Colton and Crestmore 36, El Paso 30½, Victorville 38½, Monolith 40.

Q. All right. How about Yuma?

A. Yuma, Colton and Crestmore 27, El Paso 36, Victorville 29½, and Monolith 30½.

42735 Q. What about these points on this railroad that runs—

Mr. Davis: The Santa Fe.

By Mr. Wooden:

Q. (Continuing.) The Santa Fe, running through Kingman and Williams and Flagstaff?

A. Well, at Kingman, Colton has 30½. El Paso does not come this far in shipping, but it would have a high rate there. I don't know what that is.

Victorville and Monolith have 30½.

Seligman, Colton and Crestmore 30½; Victorville and Monolith the same.

At Ash Fork, 40 miles east; the same; Williams the same; Flagstaff the same.

Q. In other words, all of those points on the Santa Fe road—

A. Over to Winslow.

Q. Over as far as Winslow, and then what?

A. Then when you get to Holbrook, Colton and Crestmore have a disadvantage, 35½; El Paso, 30½; Victorville, 35½, and Monolith 35½.

Q. That map shows the situation of the rates as of what time?

A. I would say that that was in the period of 1931. I am just judging about that.

Q. 1931, and how long did that continue? What
42736 was the latest date that that information was applicable to?

A. Well, I would have to look at our freight tariffs to

see that, but there has been a raise of one cent at different times, and then one cent was taken off.

Q. You mean on the Santa Fe?

A. Well, in all points in Arizona. It would not affect anything.

Q. Then, was there an increase of 10 percent made on those rates that you have just testified about?

A. There was an increase made at that time, I think, and I don't remember whether it was taken off later, or not.

Q. When was it made?

A. I think it was in January, 1937.

Q. Well, do the figures that you gave include that 10 percent increase, or was that before the 10 percent increase was made?

A. I think these figures are before the 10 percent increase.

Q. You think it was before January, 1937?

A. I think they were before 1937.

Mr. Davis: The witness has testified as to that in paragraph 21.

By Mr. Wooden:

Q. Do you have competition from mills in Colorado, down in central Arizona?

A. There is a little competition in there, I think.

Q. Also from El Paso to central Arizona.

42737 A. El Paso comes into the central part of Arizona.

Q. How far?

A. Well, it comes into Phoenix and Gila Bend, and also operates in the same territory where we have equal freight rates.

Q. The Portland, Colo., mill has a very heavy freight disadvantage.

A. Yes.

Q. In coming into central Arizona.

A. I think so.

Q. As a matter of fact, does not Respondents' Exhibit 3440 show a difference; in other words, does it not show from Colton and Crestmore, Phoenix 23 cents as against 45 cents from Portland, Colo.?

A. That is the comparison all right.

Q. In other words, 22 cents a hundred disadvantage for Portland, Colo.

A. Yes.

Q. And that is what—around a dollar a barrel, or nearly a dollar a barrel?

A. Eighty cents a barrel.

Q. Eighty cents a barrel.

A. Yes.

Mr. Davis: May I ask as of what date that is.

The Witness: That is dated May 9th.

Mr. Wooden: Yes; 1940.

42738 By Mr. Wooden:

Q. Well, there are differences not only in commercial freight rates between these various mills with which you compete, but differences also in land-grant rates; are there not?

A. The land-grant rate would be affected by the commercial rate.

Q. And I take it your answer is yes, there are similar differences between land-grant rates and commercial rates?

A. Yes.

Q. And on land-grant rates you have different rates from Colton than the Crestmore Mill has.

A. Different land-grant rates?

Q. Yes.

A. Yes.

Q. In other words, you have, in many instances, the same commercial rates at Crestmore, but different land-grant rates.

A. That is right.

Q. Now, referring to paragraph numbered 83 of your stipulated testimony, was the California Portland Cement Company ever a participant in any arrangement whereby the available business was divided between it and its competitors in Southern California?

A. I know of no such agreement or arrangement.

Q. Is it your testimony that there was none or merely that you do not know of any?

42739 A. I don't know of any, and I don't think there was.

Q. Now, referring to paragraph numbered 86 of your stipulated testimony, will you explain why the Mallory statistics were thrown away as worthless by your company?

A. Well, we give out few statistics concerning our company. That would be one reason for throwing them away.

Q. Well, are not statistics useful without regard to whether you give them out or not?

A. We only file one or two reports of statistics, and I think one of them is the Bureau of Mines. Outside of that, we give no one any information regarding our business.

Q. I am talking about the Mallory statistics in your paragraph 86, in which you say they were received from The Cement Institute.

A. I never heard of Mr. Mallory until this case came up; so that is as much as I know about his organization.

Q. Well, you undertook to state here in this paragraph that the Mallory statistics were thrown away as worthless.

A. That is correct. Our officers paid no attention to the request for statistics, if they received any.

Q. I am not asking you what you may have furnished, but what you received. You say here you received them, and I want to know why they were worthless.

A. I don't know, because I never saw them.

Q. Well, is not this your statement here?

42740 A. Yes.

Q. You are undertaking to state that they were worthless, but you cannot tell me why they were worthless; is that right?

A. As I have stated, they possibly asked for information that our company would not give out to anyone.

Q. You cannot tell me why they were worthless, although you made the statement that they were worthless?

A. Well, if the statistics came into the management of the company, and they considered them worthless and threw them away, that is as far as I know about them.

Trial Examiner Norwood: Who was it that considered them worthless?

The Witness: Some part of the management.

Trial Examiner Norwood: Did you consider them worthless?

The Witness: I did not see them.

Trial Examiner Norwood: Did anybody say they were worthless?

The Witness: Yes; the management told me
42741 they were worthless. That is why they threw them away.

By Mr. Wooden:

Q. So this statement of yours in paragraph 86 about their worthlessness was based not upon your own personal experience and knowledge, but upon information from officers of your company; is that right?

A. It was based upon information from the officers of our company.

Trial Examiner Norwood: What official told you they were worthless?

The Witness: The secretary of the company.

Trial Examiner Norwood: What is his name?

The Witness: Bancroft.

Mr. Wooden: Your honor, I move to strike the witness' statement contained in paragraph 86 of his stipulated testimony, it now appearing that he does not know anything about it, and he is basing it merely on hearsay from other people in his company.

Mr. Davis: I think that motion as to the last sentence in paragraph 86 is well taken.

Trial Examiner Norwood: Yes. The motion is allowed.

By Mr. Wooden:

Q. As a matter of fact, your company had, had it not, similar statistics from other organizations in California?

A. I have not seen them.

42742 Q. You do not know what they may have received from any other source?

A. No.

Q. Referring to paragraph numbered 87 of your stipulated testimony, what was the difference in price between Colorado, Calif., and Yuma, Ariz., which is referred to there?

A. Sometimes there might be a few cents difference between this price at those two points, and sometimes there might not be any.

Q. Well, what was the situation as to the difference in price, say, prior to July, 1937?

A. I don't think there was any material difference between the price down there. As I say, it might have been one or two cents.

Q. Never more than one or two cents per barrel?

A. It would be a reasonable amount, whatever it was, I think.

Q. But you do not mean to say it was never more than one or two cents?

A. Well, it might have been four cents, perhaps. That would be the range, I think.

Q. Were there dealers at Colorado, Calif.?

A. There are no dealers there.

Q. There were at Yuma?

A. Yes; there were dealers at Yuma.

42743 Q. Are there customers of any kind at Colorado, Calif.?

A. There is practically no settlement there at Colorado.

Q. You did not have any customers there?

A. No; not any customers there.

Q. What do you mean by "selling efforts at Colorado," then?

A. Contractors might have jobs down there on the Colorado River. We endeavored to sell them there.

Q. What do you mean by the statement in paragraph numbered 88, the second subparagraph, to the effect that: "The uncertainties of the Robinson-Patman Act carry the influence of Phoenix prices to Yuma."

A. We would be under the impression that the normal mill net received on Phoenix business would be what we would have to obtain at Yuma.

Q. And your mill net, then, at Phoenix and Yuma are the same?

A. As I stated before, substantially the same—within a fraction of a cent, I think.

Q. You disposed of the fractions, though, did you not, by adjusting them up or down?

A. Up or down, yes. As I say, the range would be within one cent, I think.

Q. They came to the same thing on a dollar-and-cents basis?

A. I don't think so. We would have to figure them out and see whether you arrive at 1.523 or 1.543.

Q. I mean on an even dollar-and-cents basis, 42744 your mill net became the same?

A. I don't think so. You get a mill base at one

point, 1.523, and at Phoenix you get a mill base of 1.345, which is caused by the difference in freights; that is all.

Q. When you talk about adjusting fractions, do you mean it is a statistical rule that when it comes out more than a half a cent, you raise it to the next cent, and when it comes out less than half a cent, you reduce it to the next cent?

A. Sometimes that practice is varied. Sometimes the fraction has been taken, and sometimes it has been dropped. There has been no set rule in doing that.

Q. But where it is dropped or added, that is the way you do it; you dispose of it where it is below a half a cent or above; is that right?

A. Yes; that is right. Sometimes we drop the last figure entirely.

Q. In this same paragraph you refer to blanket freight rates over most of western Arizona. You have covered now, have you not, specifically what the rates are to a number of western Arizona points?

A. Yes; very specifically, on the map.

Q. The other day I did not have some of the points that I wanted to ask you about; but did you not have a rail rate from Colton to Bisbee of 40 cents?

A. Which period are you talking about—1940 or 1931?

42745 Q. Well, take the period prior to 1940.

A. Now our rate during this period, to Bisbee, is 36, and the El Paso rate is 30½.

Q. That became 40 on the 10 percent increase—that 36 cent rate.

A. Yes.

Q. And at Globe, what was it?

A. At Globe our rate was 39½, and the El Paso rate was 30½.

Q. At Holbrook, what was your rate?

A. Our rate was 35½, and El Paso was 30½.

Q. Now, will you tell us whether or not at Bisbee, Globe, and Holbrook, you had the same destination price?

A. I could not tell without referring to our actual price lists.

Q. I show you Commission's Exhibit 1310-L, one of your company's price lists, dated October 12, 1936, and

I will ask you to state whether or not that is correct (handing the exhibit to the witness)?

A. That is our price list, and the prices shown are the same as those three points.

Q. And the price at those three points was the same, although your freight rates from Colton were different; is that right?

A. Yes.

Q. Now, referring to paragraph numbered 95 of your stipulated testimony, the third subparagraph, is
42746 there not some business, cement business, between towns where dealers have yards, in Arizona?

A. Do you mean off in the desert, or in the city?

Q. Maybe both.

A. Well, in the cities you would be more inclined to find some cement business there, but when you get away out in the desert there is absolutely none.

Q. Is there not some towns, small towns, that do not have any dealers in between other towns that do have dealers?

A. There are some towns—well, you wouldn't call them towns. They are just highway stands or railroad section men's houses, or something like that.

Q. Well, on some of those lines in Arizona, there is some agriculture, is there not?

A. A little bit. It is mostly desert.

Q. However, those agricultural producers have some cement needs; have they not?

A. Oh, yes.

Q. You say there is no opportunity for competition between dealers at California points and dealers at Arizona and Nevada points. Why is there not opportunity for competition in that business; that is, in between the towns where the dealers are?

A. The distance between those points is possibly 120 miles, or some 65 or 100 miles.

Q. Yes; but somebody has to supply that ce-
42747 ment. There are dealers in nearby towns.

A. The dealer would not go out and deliver it out there.

Q. He might sell it to those people who came in after it.

A. Yes; that is right.

Q. It would depend, would it not, on which town the purchaser wanted to go to to get his cement?

A. Possibly it would depend on how near he was.

Q. Well, he might go to a town that was five or ten miles further away, if he could get a better price; might he not?

A. There is so little demand that I don't think that would be given any consideration out there.

Q. Well, it might be a considerable purchase, so far as the consumer was concerned, and yet not amount to much as compared with the dealer's total business.

A. It would be only a few sacks.

Q. Well, whatever it might be—

A. There might be.

Q. And there might be some competition there?

A. I can't conceive it.

Q. Just because there is no business?

A. No people.

Q. No people?

A. No.

Q. But so far as there is any business in between the towns, and so far as there is any cement consumers
42748 between the towns, then there is an opportunity for competition between the dealers in the towns; is not that so?

A. Well, that is stretching it too far.

Q. Do you know what the conditions of competition are between dealers? Do you know who their customers are and where they are located?

A. No. I have been through that country and there is nothing there.

Q. It is a rather barren country.

A. Yes.

Q. With comparatively small population and small cement demand.

A. Small population and small demand.

Q. For ordinary purposes.

A. Yes.

Q. Are there not some Government projects between the towns there?

A. Between some towns there might be.

Q. And some of that would run into a pretty good-sized tonnage?

A. No; not very much.

Q. Would it run into some thousands of sacks on occasion?

A. There might be one car.

Q. Or a large number of barrels.

A. There might be one carload a year, or something like that.

42749 Q. Well, for the last several years, since 1934 or 1935, there has been a considerable amount of Government projects building with cement out in Arizona, has there not?

A. Yes.

Q. And a good deal of it has been handled by the dealer; has it not?

A. Mostly by the mills.

Q. Well, on W. P. A. projects the dealers have handled it; have they not?

A. Yes.

Q. Such as schools and swimming pools, as you mentioned the other day.

A. Yes.

Q. Would you say that there was no opportunity for competition between dealers in different towns on such business?

A. You are referring to up here in the desert part of the country, where your locations are miles and miles apart.

Trial Examiner Norwood: Between any towns.

The Witness: I beg your pardon.

Trial Examiner Norwood: How is it between any towns?

The Witness: Well, in the Phoenix area there was competition between dealers for business.

By Mr. Wooden:

Q. Dealers at Phoenix and dealers at some other towns?

42750 A. I don't think there would be a great deal of competition between dealers in other points there, because the towns are—

Trial Examiner Norwood: Would there be any?

The Witness: There might be some, yes.

By Mr. Wooden:

Q. Then, it is hardly accurate to say, as you said in your stipulated testimony, that there is no opportunity for competition.

A. Well, that is referring to the country up there in the northern part of the State.

Q. Well, it says dealers at California points and dealers at Arizona and Nevada points.

A. That is on the border line of the State of California and the border line of Arizona, where the desert is.

Q. Oh! In other words, there is no opportunity for competition between California dealers with dealers in Arizona, or with dealers in Nevada; is that what that means?

A. There is no opportunity there, no, because the distances are so far apart.

Q. Well, is that what it means?

A. I think that is what it means.

Q. Now, you say in that same paragraph that your company has not sold cement to a purchaser for delivery at a California point for re-sale or re-delivery in Arizona or Nevada. Is it not also true that that has been your company's policy, not to sell to one dealer for delivery

42751 in another dealer's town?

A. We tried to respect each dealer's territory in which he normally operates.

Trial Examiner Norwood: Well, it is not a direct answer. We are taking up too much time here by the witness giving the explanation before he gives his answer, and I want him to answer the question and leave the explanation to his Counsel. Counsel will bring out by questions to you, Mr. Witness, any explanations that he thinks should

42752 be made.

Go ahead.

The Witness: Will you give me that question again?

(Question read as follows:

"Q. Now, you say in that same paragraph that your company has not sold cement to a purchaser for delivery at a California point for re-sale or re-delivery in Arizona or Nevada. Is it not also true that that has been your company's policy, not to sell to one dealer for delivery in another dealer's town?")

A. We have never had occasion to sell.

Trial Examiner Norwood: Answer as to the policy.

The Witness: Well, it has been our policy to keep sales to dealers within the territory in which they normally operate.

By Mr. Wooden:

Q. If a dealer in one town wanted you to ship to a town

where he did not have a yard, and where another dealer did have a yard, it has been your policy not to accept such business?

A. Well, our policy would be to try to get the two dealers together and work out a harmonious arrangement for selling the cement.

Q. And if you could not do that, you would not make the sale, knowing that it was going into another dealer's town?

A. Well, each case would have to be decided on
42753 its own merits. There would be no set rule for it.

Q. Has it not been your general policy to refuse such sales, unless you could get the dealers together?

A. I don't think we have had occasion to refuse them.

Q. Have you made them?

A. I don't think we have made them. We have always been able to get harmonious arrangements made between the dealers.

42759 Q. Mr. Blair, do you know what the paper is that I have been talking about?

A. Just in a general way, I think.

Q. Well, you examined it; did you not?

A. I don't know that I did.

Q. Well, you saw it.

A. I just glanced at it, I think.

Q. Did you not have some conversation about it with Mr. MacIntyre?

A. I don't know that I did, with Mr. MacIntyre.

Q. On Friday morning before the hearing convened?

A. We had a conversation about one paper, but I don't remember which one it was.

Q. Don't you remember this paper as being a tabulation of bids by Phoenix dealers?

A. That is as I would remember it.

Q. Do you recall the dates?

A. No, I do not.

Q. As I stated them.

A. The recollection that I have from Mr. MacIntyre now is that there were a number of documents or pieces of paper showing prices of one kind or another, or something like that, and he was asking me; he said that he didn't know that there were so many dealers in Phoenix. That is my recollection of the paper.

42760 Q. You brought the paper here among the bids you produced?

A. It was among some papers. I don't know where it was located.

Q. It came from the files of your sales department, did it not?

A. It did.

Q. Did you know anything about the situation in Phoenix among dealers there regarding bids on that 3,000-barrel order?

A. No, I did not know anything about that.

Q. You never have known anything about it?

A. You mean—say that again, Mr. Wooden.

Q. I say, have you ever known anything about that situation in Phoenix, among the dealers there, in bidding on that 3,000-barrel order?

A. No; I have no knowledge of that.

Q. Never have had?

A. No.

Q. Why is it you did not handle that transaction, along with the others that you say you normally handle?

A. We may not have received the bid.

Q. Where did you get the paper there that contains the tabulation of bids?

A. I don't know where it came from.

Q. Who made it up?

A. I don't know that.

2761 Q. Do you know what Mr. Dartt of your company had to do with the matter?

A. All he did in that respect was, possibly, put his stamp on it, that he had seen it, and passed it out to be filed.

Q. What interest was it to your company to know what the dealers at Phoenix, Ariz., were bidding?

A. I don't know.

Q. Do you know what that 3,000-barrel order was to be used for?

A. I don't know. I don't know that I ever saw the bid.

Q. Showing you Commission's Exhibit 202-U, a copy of a——

Mr. Davis: May I see that first, Mr. Wooden?

Mr. Wooden: I don't know that it is necessary for you to see it first.

Mr. Davis: May I see it first, if the Court please?

Trial Examiner Norwood: I think you may.

Q. I show you, Mr. Blair, Commission's Exhibit 202-U,

which is a copy of a letter from G. H. Reiter, of The Cement Institute, to Mr. Duque. Did that letter ever come to your attention before?

A. No, I never saw this before.

42762 Q. Did you know of the receipt of such a letter in the course of your business?

A. This is the first time I have seen the letter.

Q. Did you know at the time the letter was received in your office by Mr. Duque of there being such a letter?

A. No, I did not know. This is the first intimation I had of the letter.

Q. Did you ever learn that The Cement Institute, through Mr. Reiter, had made inquiry about the Phoenix situation?

A. No. That letter is the first intimation I had.

Mr. Wooden: Mr. Davis, do I understand that you are willing to let us see the document provided we do not mark it or offer it?

Mr. Davis: Yes, with that agreement.

42763 Mr. Wooden: I should also like to serve notice for the production of the reply by Mr. E. E. Duque to Commission's Exhibit 202-U, which was a letter to Mr. Duque from Mr. Reiter, dated October 16, 1936.

Mr. Davis: I have just been looking for that, Mr. Wooden. However, a further reading of the document shows me that the information which I had though was in a reply which I had seen, is in the last paragraph of the letter itself, reporting a conversation between—

Mr. Wooden: Whatever reply there may have been.

Mr. Davis: I will see if I can find it. I do not have it with me. I have searched through my records.

42764 By Mr. Wooden:

Q. Now, referring to Respondents' Exhibit 3442, do you have that in your stipulated testimony there? It is a letter from your company to the Treasury Department, dated April 12, 1938.

Mr. Wooden: Do you have a copy of that?

Mr. Davis: I have a copy in my file.

Mr. Wooden: I can show him a copy that I have here.

By Mr. Wooden:

Q. (Showing a paper to the witness.) Will you explain why in one paragraph of that letter you included the Procurement Division and the Works Progress Administration among the branches of the Government that you would sell

direct, or to which your bid would apply, and in another paragraph explain the necessity for protecting your dealers?

A. Not having written the letter, I would say that this paragraph relating to dealers was that the dealers would furnish certain cement on W.P.A. work in l.c.l. quantities. That would be one interpretation of it.

Q. Does that mean also that you were going to bid direct on W.P.A. bids but have the dealers handle the order? Perhaps you can tell me what your practice or policy was as distinguished from the letter there. Just forget the letter and tell me whether your practice and policy in some instances was to bid direct on W.P.A. business but have the dealer handle the order.

42765 A. That was a policy in some instances.

Q. All right.

And in some such instances you shipped direct from the mill to the job, did you not?

A. I think that statement there refers to less-than-carload deliveries. That is my interpretation of it.

Q. But in some instances where you quoted direct but handled the order through the dealer, you shipped direct to the job, didn't you?

A. I think if we shipped direct we would handle the order direct.

Q. You mean to say that you had no policy with regard to what I asked you?

A. It would depend on the type of project as to which decision we made.

Q. On some projects, then, I understand you did quote direct but handled the order through the dealer?

A. No. If we quoted direct, we would make delivery direct.

Q. Didn't you sometimes bid on W.P.A. orders along with your dealers?

A. They would bid as individuals themselves.

Q. But didn't you bid as a bidder at the same time your dealers would bid?

A. It so happened in some cases.

Q. And in such cases if you got the business,

42766 didn't you handle it through the dealer?

A. No. If the order came to us, why, we would make the delivery, if it was carload business.

Q. You did not handle it through the dealer's account?

A. Not that I recall.

Q. You did not allow the dealer a commission or

A. No commission that I know of.

Q. —allowance?

A. No commission that I know of. We handled the thing direct if it was our business.

Q. Now, this letter, Respondents' Exhibit 3442, talks about minimizing the injury to dealers, at the same time allowing the Government any saving it might obtain by reason of reduced transportation charges on the items bid. The Government could not get the benefit of low transportation charges on land-grant rates when you sold through the dealers, could it?

A. Yes.

Q. How could it? Didn't it have to take the title at the mill in order to get the benefit of the land-grant rate?

Mr. Davis: Just a moment.

Objected to as calling for a conclusion of the witness.

Trial Examiner Norwood: Answer that of your own knowledge.

A. I think the dealers could buy the cement at 12767 the mill and ship to a Government agency.

By Mr. Wooden:

Q. Turning over the possession and the ownership of it at the mill?

A. Well, whichever way they handled it, we sold the dealer the cement, and the dealer handled it in whichever way it had to be worked out.

Q. Well, don't you know as a matter of fact that on some W.P.A. shipments that were handled through dealers that the Government had to pay the commercial freight to the dealer's location?

A. They might have.

Q. Don't you know as a matter of fact that they did in some cases?

A. I don't know definitely.

Q. You have every reason to believe that they did in some cases, haven't you?

A. I don't know.

Q. They might have?

A. They might have.

12768 Q. If your company has been so willing to make f.o.b. mill bids to the Federal Government, why did you go to such lengths in your correspondence that is in

evidence here as Respondents' Exhibit 3443-D to H, inclusive, to argue against the policy of the Government bidding f.o.b. mill?

Mr. Davis: Just a moment. Objected to as assuming a state of facts not in evidence.

42769 Mr. Wooden: Well, the witness' testimony, stipulated and otherwise, is surely to the effect that the company has quoted f.o.b. mill to the Government.

Trial Examiner Norwood: Is that right?

The Witness: Yes; we quoted f.o.b. mill to the Government.

Mr. Wooden: And my question was, why this long letter in the form of Respondents' Exhibit 3443 arguing against the Government policy of buying f.o.b. mill.

Mr. Davis: Now, just a moment, if the Court please. I object to the question on the ground that it assumes a state of facts not in evidence, because the letter does not argue against the policy of f.o.b. mill buying, as the witness has interpreted f.o.b. mill buying.

Trial Examiner Norwood: I sustain the objection, unless the Counsel can show me that that is an incorrect statement.

42770 By Mr. Wooden:

Q. Do you have any knowledge about this letter, Respondents' Exhibit 3443-D to H, inclusive?

A. It was written by another officer—by an officer of the company, not by myself.

Q. Did you have any part in preparing it?

A. I do not recall that I did.

Q. You are not sure one way or the other whether you participated in it?

A. I may have participated in it to a minor extent.

Q. Well, weren't you or the company, in this letter, objecting to this invitation because it did not provide the information that showed the points of destination?

A. I think we explained that if we had known the destination points we would be in a better position to quote. I think that was the substance of that letter.

Q. You wanted it, according to the letter, in order to enable you to make competitive bids. You meant by that make your bids as low as those of any of your competitors?

42771 A. Yes.

Q. On the destination basis?

A. We wanted the information so that we could quote as low as our competitors.

Q. And then I asked you, on the destination basis?

A. I think that is the substance of that letter.

Q. I have just one more question.

Referring you to Commission's Exhibit 971-22-Z. Do you recognize the signature to that letter?

Mr. Davis: May I see it just a moment?

(Mr. Davis examines the document referred to.)

By Mr. Wooden:

Q. Isn't it the handwriting of Mr. Boles?

Mr. Wooden: I do not object to your reading the letter, but my question simply asked him to identify the handwriting of the signature.

A. I do not know whose handwriting that is, no.

By Mr. Wooden:

Q. You have a Mr. Boles?

A. Yes, we do.

Q. You do not recognize it as his?

A. No, I do not recognize it as his. The only 42772 thing I recognize are his initials there.

Q. Did Mr. Boles participate in the preparation of the information to be supplied to Messrs. Clark and Burns on the questionaire?

A. I believe that he and some of his men did.

Mr. Wooden: Mr. Davis, I am asking if you are agreeable to stipulate that the testimony of Mr. Duque, president—vice-president at the time of the California Portland Cement Company at Los Angeles, appearing on pages 9333 and 9334 of the record, in so far as it relates on the record to Commission's Exhibit 971-22-S, is equally applicable to the exhibit which is in evidence as Commission's Exhibit 971-22-Z?

Mr. Davis: Yes.

42777 *Redirect Examination by Mr. Davis.*

Q. Now, Mr. Blair, on cross-examination relative to your testimony in paragraph 18 you referred to periods of unstable prices. Have you made a further examination of your records on that subject?

A. I have.

Q. Now, will you please state in what periods there was instability in prices since December, 1933?

A. Well, between December of 1933 and November of 1934 prices were pretty stable, but between November, '34, and June, '35, the market was unstable and we had three price changes in that period.

42778 Q. And those are shown on the table?

A. Those are shown on the table here.

Q. Well, we need not refer to them further.

Now, what other period was there that you had unstable prices?

A. Well, between December—well, between June 2d and October or November of 1935 the price was fairly stable.

Q. I want the periods of instability.

A. Well, between December on, 1937, there was instability in prices then.

Q. Well, let me ask you about your table which shows a drop in price on October 19, 1938; another one on November 9, 1938, in the Los Angeles area and in the Phoenix area; it drops on December 1, 1938, December 22—no—and February 15, 1938. Were those periods of instability?

A. Those were periods of instability causing those price changes.

Q. Now, was there any period of instability particularly in Government bidding?

A. Well, in 1937 there was quite a bit of instability in Government bidding, and prices on Government bidding were irregular.

Mr. Wooden: I ask that the time in 1937 be fixed to which the testimony refers.

The Witness: Well, I say practically from the
42779 beginning of '37 those Government biddings were irregular.

By Mr. Davis:

Q. Now, on cross-examination on paragraph 29 you were asked in what towns in Arizona where Colton has a freight rate disadvantage the Company has had dealer connections. Will you name those towns?

A. Well, there was Bisbee, Lowell, Nogales.

Q. How about Holbrook?

A. Holbrook is another point in question.

Q. Now, did you have a dealer in both Bisbee and Lowell?

A. Well, there is one dealer for both towns.

Q. That is, Bisbee and Lowell are really one town?

A. They are really one town.

Q. Now, on paragraph 48 I want to ask you further about the lists of freight rates which you referred to in that paragraph, and on which you testified on cross-examination. Have you discontinued the keeping of a list of commercial freight rates for all destinations for which Colton states a price on its price list?

A. We keep the list of stations and the list of freights applicable to that station from Colton.

Q. Is that list kept up to date?

A. It is kept up to date.

Q. What was the list that you referred to as being discontinued in 1933?

12780 A. I thought Mr. Wooden was referring to carrying the freight rates in our price list, in our price tables that we keep in our office.

Q. Explain what that is.

A. Well, it is—we show the destination cost, the rate per hundred, the rate per barrel, and the derived mill net. That was discontinued in 1933, I believe.

Q. That is, you discontinued your having it put together and putting in your mill net extension?

A. Yes.

Q. Now, on paragraph 49, do you have with you any of the land-grant rate sheets, like the one introduced as Respondents' 3440?

Just keep your seat, Mr. Blair.

Now, can you tell me, either by referring to those sheets or without referring to them, from what source or sources the land-grant rate information on those sheets is obtained?

A. Well, I think I can tell by looking at them.

Q. All right, then, you may pick them up.

(The witness produces documents.)

Mr. Davis: May I be permitted to have the witness just look at them to refresh his recollection without marking them for identification?

Trial Examiner Norwood: Yes.

By Mr. Davis:

12781 Q. All right, go ahead, Mr. Blair.

A. Well, we received the land-grant information from our traffic department.

Q. How did they arrive at it?

A. They arrived at it by calculation.

Q. Do you have any book which shows Government—

A. We have tables showing the mileages from point to point, and the land-grant mileages, and the commercial mileages figured out. That is from our own traffic department.

We received similar information from the Pacific Coast Cement Institute and from the Southern Pacific Railroad.

Q. Now, wait a minute. Did you receive the same information from both the Institute and the railroad?

A. We received the same information from both sources in this particular case.

Q. All right.

A. We received the information concerning land-grant rates from the Santa Fe Railroad.

We received land-grant information from our salesmen in Arizona, who got it from Government sources down there.

We received land-grant information from a Mr. Levy, of the Southern Pacific Company, who secured the lists there. The sources are very much the same.

Q. Well, now, will you see if you have had occasions when you have received information from Pacific
42782 Coast Institute where you had previously received it from the railroads?

A. We received information from the Southern Pacific Company on December 28, 1937, and two days later we received the same information from the Pacific Coast Cement Institute.

Q. Now, did that occur occasionally?

A. Oh, it occurred occasionally—on several occasions.

Q. You asked for the information and the Institute had also asked for it?

A. They had also asked for it.

Q. And when you did receive it did it come in the form of carbon copies?

A. It came in the form of carbon copies.

Q. On paragraph 54 you have produced, and the Commission has introduced exhibits which are marked 3257, 3258, and 3260, which show a bid price in more than three figures.

I show you those three exhibits.

A. Yes.

Q. Now, you have also testified in interrogation by Counsel for the Commission that you have gone through

your files and have found some other bids where the price is stated in more than three figures. Have you made a thorough investigation of your biddings since that time?

A. I have made a thorough investigation, and I think there is one case that was not covered here.

Q. Just one other case?

42783 A. One other case. And that was

Q. And only other biddings where the price is stated in not more than three figures?

A. In two or three decimals.

Q. Yes. And in most of the cases—

A. It is stated in two decimals.

Q. Now, you have a table of bids from the various agencies of the Government.

Just keep your seat, Mr. Blair.

I am asking you if these tables that I have in my hand are tables of bids which you filed with the Federal Government.

A. These are tables of bids that we filed with the various departments of the Government.

Q. Can you tell from these tables, or from your own information, when you first filed a bid at a stated f.o.b. mill price after the Code period?

A. I think it was soon after the Code period that we filed f.o.b. mill prices.

Q. At once after the Code; is that correct?

A. Very soon afterwards; at once, I would think.

Mr. Wooden: I would appreciate if you did not lead so much.

Mr. Davis: I was trying to avoid reference to these sheets, because the record is so voluminous that I
42784 did not want to have them marked for identification, and I was afraid that referring the witness to them might have that result.

Mr. Wooden: Well, it is the form of your questions.

By Mr. Davis:

Q. Now, relative to paragraph 57, before the company acquired its own trucks, under what arrangements and on what sort of a compensation basis was cement hauled by truck by your company?

A. Well, before we had our own trucks our cement was hauled by trucking concerns, and they were paid on the basis of railroad commission rates. Prior to that time—

Q. Prior to what time?

A. Prior to the time of the railroad commission rates going into effect our cement was hauled by contract carriers, and they were paid railroad rates, or somewhat higher—paid on railroad rates or somewhat higher.

Q. Now, on paragraph 64, in this paragraph you refer to the mill net realized on commercial sales. Now, in the Los Angeles area, that is, the area which has a blanket price, will your mill net average more nearly—well, how will it average with relation to the Los Angeles price, or the prices at other destinations?

A. Well, it would possibly range higher in Los Angeles than it will at points farther out.

Q. No. I mean, taking the average over the
42785 whole area, is it more nearly the Los Angeles mill net, or, let us say, the Redondo mill net?

A. It is more nearly the Los Angeles mill net.

Q. And in the San Diego area, what would you say with reference to San Diego and Chula Vista, for instance?

A. We get very little business from San Diego and Chula Vista compared with Los Angeles, the mill—

Q. I am not asking you to compare. I am asking you for the average mill net. Is it more nearly that as the price at San Diego or the price at Chula Vista?

A. The mill net at San Diego would be lower—

Q. I am not asking you that, Mr. Blair. I am asking you, taking your mill net for sales made in the San Diego area, does the whole mill net average more nearly the San Diego price or the Chula Vista price?

A. More nearly averages the Los Angeles price—Los Angeles mill net.

Q. I will ask you to look at your testimony. Perhaps I am asking you to assume a recollection.

I believe that is—I guess it is my mistake. I have referred to the wrong paragraph numbers.

I refer you to page 8, Mr. Blair.

Mr. Davis: Will you read the last question, Mr. Reporter?

(Record read as follows:

42786 "I am asking you, taking your mill net for sales made in the San Diego area, does the whole mill net average more nearly the San Diego price or the Chula Vista price?")

A. Well, it more nearly approaches the San Diego price.

By Mr. Davis:

Q. Now, after the price list of June 2, 1935, did the com-

pany send price lists, or any of them, to the United States Government, or to any agency of the United States Government?

A. We never distributed any price lists after June 2, 1935.

Q. And that includes the United States Government?

A. That includes the Government, and dealers and everybody.

Q. Do you have in mind any occasion on which you, or any representative of the company, ever conferred with more than one dealer at a time relative to W.P.A. orders on Government invitations?

A. We never conferred with any group of dealers.

Q. Do you know of any such occasion or conference?

A. I do not know of any such occasion or conference.

Q. When you referred in your cross-examination to an understanding between the company and a dealer regarding W.P.A. work, what was the understanding you referred to?

A. I do not know whether we had any particular understanding with any dealer on any W.P.A. work.

Q. When you conferred with a dealer on a W.P.A. 42787 invitation, what was the dealer talking to your about?

A. Well, he possibly would be wanting to bid on that cement.

Q. And did you receive any requests for quotations to dealers on an f.o.b. mill basis?

A. Yes, we received quotations—I mean inquiries from dealers asking us to make them mill quotations.

Q. And did you ever make any agreement with an individual dealer to quote him or to sell him on an f.o.b. mill basis?

A. We made agreements with individual dealers that we would do that.

Q. Did you obligate yourself in any way in your understandings with dealers relative to your own bidding on W.P.A. work?

A. Well, we did not bind ourselves to the dealer to refrain from bidding on any Government work.

Q. Since the Code period, has there been any building material dealers' organization in the Los Angeles area?

A. There might be one, but, as I understand, it more or less functions at the present time just as a credit-gathering organization.

Q. Now, since 1935, do you know whether or not it has functioned for any other purpose?

A. I do not know that it has functioned for any other purpose.

Q. Do you know whether or not your company has had any dealings with building material dealers in Los Angeles?

A. As a group?

42788 Q. With the secretary or as a group.

A. We have had no dealings with any group association of building material dealers. We might talk to dealers individually about their problems, but that is as far as we go.

Q. Now, in the San Diego area has there been a building material dealer organization since the Code?

A. There was some sort of an organization like that down there, but most of those dealer associations are passing out of the picture through lack of support, and the same is true in San Diego.

Q. Now, what was the situation earlier, say, in 1935, and 1936?

A. Oh, they were a little more active then.

Q. Now, do you know of any arrangement made by the company with any San Diego dealer organization?

A. I know of no such arrangement. We never had any direct contact with them.

Q. Now, has there been a dealer organization in Arizona?

A. There is a dealer organization in Arizona, in Phoenix.

Q. And who is the head of that organization?

A. Mr. Totten.

Q. Have you had any dealings, so far as you know, with that dealers' organization?

A. We have had a number of letters from Mr. Totten, but we never replied to any one of them, and we
42789 simply disregarded anything that he said in those letters. He is a prolific letter writer.

Q. I refer you, Mr. Blair, to this memorandum, which is marked H in Exhibit 3262.

Mr. MacIntyre: Commission's exhibit.

Mr. Davis: Commission's exhibit, yes.

By Mr. Davis:

Q. That bears the initials "J.A.B." Is that you?

A. That is me.

Q. And that is a report of a telephone conversation, according to the statement; is that correct?

A. Yes. It is a report of a telephone conversation from our salesman in Arizona.

Q. And who is Mr. Coleman?

A. He is our salesman in Arizona.

Q. Now, I will refer you to Commission's Exhibit 3262-A to D, which is a Government bid, is it not?

A. That is a Government bid, yes.

Q. To what service?

A. To the Department of Agriculture in Phoenix, Ariz.

Q. What service of the Department?

A. Forest Service.

Q. And was that bid filed with the Forest Service?

A. That is a copy of our bid.

Q. And was the bid ever recalled?

42790 A. It never was recalled.

Q. Do you know what action was taken with reference to the conversation which you had with Mr. Coleman?

A. Well, he reported that the dealers wanted to bid on that.

Q. I mean, after you had had your conversation what action was taken on your report of the request received from Mr. Totten?

A. Well, we bid on the item irrespective of any request from Mr. Totten.

Q. What was the company's custom with reference to communications received from Mr. Totten?

A. We simply paid no attention to them. Sometimes we kept them and sometimes we did not.

Q. When you had any dealings with any of your dealer contacts with whom did you deal?

A. We dealt through our salesman in the territory.

Q. And with whom did he deal?

A. With the dealer direct, usually.

You are referring to Mr. Totten?

Q. I was referring to— You have answered the question. Attached to this—or as a part of this Exhibit 3262-J is a letter from Holstead Lumber Company with a notation "Phoenix." Was Holstead Lumber Company a dealer with whom you did business?

A. He was a dealer with whom we did business.

42791 Q. And to what extent did you do business with him?

A. Oh, quite considerable. He was a good dealer.

Q. And how long had you done business with that dealer?

A. Ever since I have been with the company, and prior to that time.

Q. And does that dealer specialize on any brand of cement?

A. I think he gives us the best breaks, handles more of our brands than others.

Q. Now, Mr. Blair, on the stand the other day you counted certain bids that you had received on which you had not made a bid. Let me ask you—

Mr. Wooden: Invitations—invitations.

Mr. Davis: Invitations, yes. I am sorry.

By Mr. Davis:

Q. I will ask you if you had counted the bids which you had made on invitations for W.P.A. bidding.

A. Yes, I have counted them.

Mr. Wooden: I object, unless it is for the same period of time covered by the other bids which he counted.

Mr. Davis: Well, let us state the period. I believe it was January 1, 1936, to—what was the date?

Trial Examiner Norwood: July 2, 1937.

Mr. Davis: July 2, 1937. Consider my question limited to that extent.

42792 Mr. Wooden: But the period covered by the bids that I have reference to I think was following the Code period in 1935 and during 1936, the first part of 1936.

By Mr. Davis:

Q. Let me ask you, Mr. Blair, then, can you tell me how many bids the company filed on W.P.A. invitations in 1936?

A. I think I can do that from some figures that I have. (The witness produces documents.)

Mr. Davis: Just take all of them to the stand, Mr. Blair.

The witness says they are all grouped together.

Do not talk to me off the stand.

(The witness resumes the witness stand.)

The Witness: Well, the record of the bids that we made,—they are grouped together, and it would be hard to separate them as to years.

By Mr. Davis:

Q. All right. Will you tell me how many were bid from January 1, 1936, until July 2, 1937?

A. I can't tell that. These are grouped—

Q. What is the period that you have?

A. Part of 1935, '36, and up to August 1, 1937.

Q. What is the number of bids?

A. The total number of bids that we bid on was 160 during that period.

42793 Q. Now, returning a moment to Exhibit 3262, was it ever the policy of your company not to bid on Forest Service bids?

A. It never was our policy not to bid.

Q. What was your policy in that regard?

A. To bid.

Q. And did you make any limitation on the size of the invitation?

A. Well, it would have to be carload business; otherwise, we could not ship into Arizona.

Q. What do you mean by "carload business"?

A. 160 barrels.

Q. Now, relative to paragraph 72, does your company require that the buyer pay the freight bill on all Arizona commercial sales?

A. No, not in all cases.

Q. What are the cases in which it does not so require?

A. Oh, highway contractors who possibly are away from their base, we may have—we will pay the freight for them; also depending on the time they can return from their State work, we will pay the freight in a case of that kind. Sometimes when the dealer is going away for a while, he may ask us to prepay the freight while he is gone, handle it for him in that way. These are about the typical illustrations.

Q. Do you have any dealers in Arizona for whom you customarily pay the freight?

42794 A. Yes. We have one dealer in Arizona now for whom we usually pay the freight.

Q. Now, when the buyer pays the freight, how is the transaction entered on the buyer's account on your books?

A. Well, when he sends in his freight bill showing that the freight has been paid we give him a credit for the freight bill on his account for cement.

Q. And for what amount is he billed?

A. Well, he is billed for the full destination price for the cement.

Q. How is the invoice made out, Mr. Blair?

A. Made our f.o.b. destination and extended to destination price.

Q. I show you a document which is headed "California Portland Cement" and ask you what is that form?

A. It is a typical form of invoice covering shipments particularly into Arizona.

Q. I notice that it is filled out with the name of the purchaser, the number of barrels, and the amount with which the purchaser is charged. Is that typical of the manner in which invoices are made out where the buyer pays the freight?

A. That is typical.

Mr. Davis: I offer the document in evidence.

Mr. Wooden: Has it been marked?

Mr. Davis: No, it has not been marked.

42795 Trial Examiner Norwood: Let the document be marked for identification.

(The document was marked for identification "Respondents' Exhibit 3446.")

Mr. Wooden: May I ask a question on voir dire?

Trial Examiner Norwood: Yes.

Examination on Voir Dire by Mr. Wooden.

Q. Mr. Blair, how long had that form of invoicing been used?

A. Oh, I would say for several years now. You mean the printing, and so forth, like that?

Q. Yes. When did it begin to be used?

A. Oh, I can't tell you the topography of it, when it was changed, or anything like that. These invoices are made out by the accounting department and they do not come under my supervision.

Q. Well, can you tell us when that method of invoicing shown on that paper began to be used by your company?

A. I think it has been in force for quite a while. I couldn't tell you exactly.

Q. Can you approximate it?

A. No, I can't even do that.

Q. Was that method of invoicing in use prior to July, 1937?

A. I am not sure, to be frank.

Mr. Wooden: I object, Your Honor, unless it is
42796 shown that it is a form which was used prior to the issuance of the complaint.

Trial Examiner Norwood: Objection sustained.

Redirect Examination (Resumed) By Mr. Davis.

Q. Now, Mr. Blair, on paragraph 74, you are not a lawyer.

A. No.

Q. Has any executive or lawyer of your company told you why the company takes care of claims against the railroads arising out of shipments to purchasers?

A. No.

Q. Do you know when title to cement passes to the buyer under sales that you make them?

A. No.

Q. Do you know what the legal liability of the buyer is for freight on such shipments?

A. No.

Q. Do you know whether or not the railroad has any cause of action for freight against the buyer?

A. I don't know.

Q. Do you know whether or not the buyer has any right against the railroad when cement is damaged by the railroad's fault during shipment?

A. I don't know.

Q. When you testified that the company handles
42797 the claims against the railroads for the account of the buyer, did you base that testimony on any information or statement given you by any of your superiors in the company?

A. No. That was just my opinion.

Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

Trial Examiner Norwood: We will recess until 1:45.

(Whereupon, at 12:15 o'clock p. m., a recess was taken until 1:45 o'clock p. m. of the same day.)

42798 Afternoon Session 1:45 P. M.

Trial Examiner Norwood: Proceed.

JAMES A. BLAIR thereupon resumed the stand and testified further as follows:

Redirect Examination (Resumed) By Mr. Davis.

Q. Mr. Blair, in paragraph 62 of your statement, you refer to the method of calculating prices on Government bids and make reference to the intended submission of examples; is that correct?

A. Yes, sir.

Mr. Davis: I will ask the Reporter to mark these documents for identification, please.

(The documents were marked for identification "Respondents' Exhibits 3447-A to 3447-H, 3448-A to 3448-F, and 3449-A to 3449-D.")

By Mr. Davis:

Q. Mr. Blair, I show you the document marked Respondents' Exhibit 3447-A to H, inclusive, for identification, and call your attention particularly to sheet H, and ask you what that is.

A. That is a calculation to determine the price to bid.

Q. The price to bid on what?

A. On this bid attached.

42799 Q. The invitation attached.

A. The invitation attached.

Q. Is that a copy of the bid that was filed?

A. That is a copy of the bid that was filed.

Trial Examiner Norwood: What is the date of those?

Mr. Wooden: September, 1935, apparently.

Mr. Davis: Yes; September, 1935.

By Mr. Davis:

Q. I show you a document marked Respondents' Exhibit 3448, for identification, and direct your attention particularly to the last sheet, marked F, and ask you what that is?

A. That is the calculation to determine the price to bid on the attached copy of invitation.

Q. And was the bid made and filed?

A. It was.

Q. As shown on that exhibit?

A. As shown on the exhibit.

Q. I show you Respondents' Exhibit 3449, for identification, and direct your attention particularly to the last page, lettered D, and ask you what that is?

A. That is a calculation to determine the price to bid on the attached invitation.

Q. Now, Mr. Blair, in your statement in paragraph 62, you refer to a method of calculating bid prices. Let me ask you: Are these the only cases where you cal-
42800 culated your bid prices in this method?

A. No; we calculated others.

Q. Is this illustrative?

A. That is illustrative of the practice.

Q. And illustrative of the practice where you used what sort of—

A. Commercial rates and land-grant rates.

Mr. Davis: I offer these documents in evidence.

Mr. Wooden: May I ask a question on voir dire, Your Honor?

Trial Examiner Norwood: Certainly.

Examination On Voir Dire By Mr. Wooden:

Q. Mr. Blair, when you said these sets of papers were illustrative of the method used, did you mean illustrative of the method used in these particular cases, or what did you mean?

A. Well, if I could look at them again—

Trial Examiner Norwood: Do they show your general practice?

The Witness: We used that practice in figuring practically all of our bids to the Government, but whether we finally decided on that basis is another thing.

By Mr. Wooden:

Q. Well, do you mean to say that the method
42801 there shown on those three illustrations has continued to be the method used since?

A. In figuring out our bids to the Government we take the commercial price and take off the commercial

freight from the competing mill, and then we add this land-grant rate to that and subtract ours, and we arrive at the price at destination that will equalize with the competing mill. That is the practice that we follow.

Q. And is that the practice that you say these three cases are illustrative of?

A. We compared them and decided which was the method we wanted to follow, what was the best price to put in that bid, in order to get it.

Q. Well, in determining the bid that you were to make on other invitations, did you use the same method that is employed in these three?

A. We made comparisons by using that method, to see what price we ought to follow.

Q. Did you use the same method, then?

A. We used the formula that I just explained a minute ago. We may not decide to do it that way. We may decide to make a straight f. o. b. mill price and make a deduction, or something like that, when we finally make up our minds what price we will bid.

Q. Up to that point, though, you calculate it in 42802 the same way as in these three cases?

A. Yes.

Q. I notice that two of them are in 1935 and one in 1936. The method illustrated by these three cases continued right along; did it?

A. We used that in almost every bid that we made.

Mr. Wooden: All right. No objection.

Trial Examiner Norwood: They will be received as marked, Respondents' Exhibits 3447-A to H, 3448-A to F, and 3449-A to D.

(RESP. EXS. 3447-A to 3447-H, 3448-A to 3448-F, and 3449-A to 3449-D were offered and received in evidence.)

Redirect Examination (Resumed) By Mr. Davis.

Q. Now, Mr. Blair, did I understand that after you have determined a result by this particular method of calculation, you then determine whether you would use that on the bid?

A. We do.

Q. And do you always use it on the bid?

A. No.

Q. You have testified that in making calculations with the use of land-grant rates, when you determine the result from those; that you drop certain decimals; is that correct?

42803 A. That is correct.

Q. And what decimals do you customarily drop?

A. We use, perhaps, only three decimals, and more often two.

Q. And in how many decimals are land-grant rates usually quoted?

Mr. Davis: I think that is sufficiently proved by other evidence that is in. We do not need to go into that.

Mr. Wooden: There are quite a few instances where we have had the extreme limit.

Mr. Davis: Very well.

Read the question, Mr. Reporter.

Trial Examiner Norwood: Read it.

(Question read.)

A. Some bids have been quoted in six decimals.

By Mr. Davis:

Q. I say, in how many decimals are land-grant rates usually quoted?

A. In six decimals.

Q. In six decimals?

A. Yes.

Q. Now, Mr. Blair, Mr. Wooden has referred you, or at least in your testimony you have referred a number of times to this map, and in your testimony this morning Mr. Wooden referred you to this map to note the

42804 commercial freight rates at Nogales, and, also, I believe, at Globe and at Holbrook. Now, let me ask you: what is the El Paso freight rate at those three places?

A. On this map it is 30½.

Q. And what is the commercial freight rate at Phoenix for El Paso?

A. 30½.

Q. Now, if there is an equal destination price quoted for those three places, would El Paso have an equal mill net for the three places?

A. Yes, El Paso would have an equal mill net for the three places.

Q. Now, let me refer you to the Los Angeles area and to your testimony in paragraph 81—that will be on page 42 of your copy—relative to the freight rate differential between the inner and the outer mills, and to your testimony in paragraph 17, setting forth differing mill nets for equal prices, and I will ask you whether or not the destination prices shown on the table in paragraph 17 will realize for any of your competitors equal mill nets for the towns shown?

A. No, they will not realize equal mill nets for the towns shown.

Q. I refer you to Commission's Exhibit 3261, and particularly to the sheet marked "I" in that exhibit.

Now, let me ask you if you know the source of the
42805 information which the sheet purports to report relative to the prices bid by the various mills listed on the report?

A. No; I do not know the source of that information.

Q. Were you present at the opening of the bids on that invitation?

A. No, sir; those bids were opened in Denver.

Q. Did you see the bid of any other company that was submitted on that invitation?

A. No, sir; I did not see any other bid other than our own.

Q. Do you personally know what any other company bid on that invitation?

A. No, I do not.

Q. Let me refer you, Mr. Blair, to sheet J, sheet K—J and K appearing to be copies of each other—and let me ask you the same question with reference to the prices shown on that exhibit. Do you know the source of the report of the purported information concerning bid prices from the various mills other than your own?

A. No, I do not.

Q. Do you have any personal information on that subject?

A. No; I have no personal knowledge on the subject.

42810 Q. In testifying on cross-examination, Mr. Blair,
42811 I believe you testified that sheet S and sheet R of Commission's Exhibit 3261 were calculation sheets

made prior to bidding, for the purpose of calculating the amount to be bid.

A. That is right.

Q. Is that correct?

A. That is right.

Mr. Davis: If I misstate any of this testimony, Mr. Wooden, you may correct me.

By Mr. Davis:

Q. Now, the first notation on this sheet is as to a bid due 3/17/36; is that correct?

A. Yes.

Q. Will you tell me what figures were considered in making that calculation as having been bid by the low bidder?

A. Well, I would say that the low bidder figured what his destination cost—

Q. Now, wait a minute. You figured the low bidder was whom; what company?

A. Redwood City.

Q. And you figured that the Government's destination cost on the bid made by Redwood City was what?

A. Was the lowest cost to the Government at destination.

Q. What was the figure?

A. $2.274906. That was my calculation of what it would be.

Q. Have you calculated what Colton's mill net, 42812 on a bid which would produce the same destination price would be?

A. I have it on some other paper, if I may use that, I believe.

Q. You may. That will save time in calculating it on the stand.

A. I think so.

On that basis, we would get a mill return of $1.37.

Q. This calculation was made for the purpose of bidding on what invitation?

A. Oh, on this one here.

Q. Well, did you bid on any other invitations for this same project?

A. Yes; we bid on a number of them.

Q. All right. What was the second bid that you made?

A. On July 23, 1936.

Q. When you bid on the invitation of July 23, 1936, did you calculate the prior bidding on the same project?

A. Well, we had the information up above there.

Q. Were you bidding at that time on Government projects or any Government projects at a mill net of $1.37?

A. No; we were trying to get our normal mill net, the same as we get on dealer business, which was $1.52, or $1.53.

Q. And this mill net from the Redwood City bid would net to you how much under your normal mill net?

A. Well, $1.37 from $1.53. That would be 16 cents under.

42813 Q. Now, your next notation on this calculation sheet is 7/23/36. Did you have any other information, Mr. Blair, as to what any other competitor bid on that bid?

A. Well, we have information that one of our bidders bid $1.86, whereas we bid $1.92.

Q. How does the $1.92 bid on that invitation compare with the bid on which you have made on the invitation of March 17, 1936?

A. Well, it was practically the same—just dropped a fraction, I think. We just dropped a fraction of a cent.

Q. Is it true that you bid with a discount on the March bidding, and without on the July?

A. We bid on the March 1 subject to discount, and in this case here we bid it subject to no discount.

Q. Have you calculated what the bid of your competitor of $1.86 would net your company and what the destination cost to the Government on a purchase from that mill at that figure would be?

A. Their quotation of $1.86, plus their land grant, would give a delivery cost to the Government of $2.2355. That is my calculation.

Q. And that bid would produce to Colton what mill net?

A. $1.34.

Q. Were you bidding on any cement at $1.34 at that time?

A. No; we were not.

42814 Q. Were you interested in bidding on cement at that price?

A. No, no.

Q. Would you meet the competition at that price?

A. No; not at that price.

Q. Now, on this sheet S, the next reference is to a bid due November 28, 1936. Will you tell me what you considered as being the low bidder on that bid; that is, in calculating your bid, what reported information did you use?

A. Well, according to the reported information, the bid of Victorville appeared to be low.

Q. And that was what?

A. They bid $1.918 net.

Q. Net where?

A. No. That is gross at Victorville.

Q. That is gross at Victorville?

A. Yes.

Q. And that produced a cost at destination to the Government of what?

A. $2.263668.

Q. Now, let me ask you, did you have any information as to whether or not the northern mills bid on that invitation?

A. One of the northern mills bid on that invitation, and their quotation was 10 cents higher than their previous quotation.

Q. Did Colton bid on that invitation?

42815 A. We did not bid on that.

Q. Can you tell me why?

A. Well, the prices of $1.34 and $1.37, as such, were not attractive to us.

Q. You did not care to meet that competition?

A. No; we did not care to meet that competition.

Q. The next bid referred to is that due December 22, 1936. Will you tell me what information you acted upon as to the bid made by Monolith and by, let us say, made by your competitors?

The Witness: Will you give me that question?

(Question read.)

Q. Well, what are the bids, Mr. Blair?

A. Well, Colton bid $2.12 and Monolith bid $2.062. Riverside was $2.12 and Victorville $1.918.

Q. What mill net would Colton get on the Victorville price?

A. Well, it would get $1.34, the same as on the previous one, I think.

Q. That is the fourth bid. Are all these bids for the same project, Mr. Blair?

A. They are all for the same project at Mesa.

Q. The next one was due when?

A. January 14, 1937.

Q. Will you tell me what information you acted upon as to the bids made on that invitation?

A. Well, in the first place, a special rate had been
42816 put in by the railroads, making all the land-grant rates equal, and we—

Q. Do you mean all the land-grant rates?

A. The land-grant rates equal from the four Southern California mills.

Q. At least making the rates equal from the four Southern California mills.

A. All those rates equal.

Q. And what was that rate?

A. $7.50880 per barrel.

Q. What had been the condition with reference to the rates on the prior bidding?

A. Well, they had all been different.

Q. Will you tell me what the rate, the land-grant rate, from Colton had been; that is, what rate you had used in your calculation as being the expected land-grant rate from Colton?

A. $8.06382.

Q. And against what as the special rate?

A. $7.50880.

Q. All right. What information did you act upon as to the bids made on this January 14, 1937, invitation?

A. Well, we figured that those prices previously quoted were too low.

Q. Now, I will ask you what were the bids that were made by your competitors?

42817 A. Well, we bid destination cost, less commercial freight; Monolith bid $2.062; Riverside bid destination price, and Victorville bid $2.062.

Q. Now, let me refer back again to the bid of July 23, 1936. What had been Monolith's bid on that one?

A. $1.86.

Q. And what relation did that have to the bid of $2.062?

A. It meant that we had to raise their price on this bid here.

Q. Now, on the $1.86, did they bid with or without a discount?

Let me withdraw that question, Mr. Blair.

I show you this memorandum, dated August 10, 1936, and ask you if that states the information on which you acted as to the price that was bid by Monolith on that invitation?

A. This memorandum with the information on which we acted.

Q. Now, does that refresh your recollection as to what you considered to be Monolith's bid on the invitation of July 23, 1936?

A. I would say that that was their figure for that bidding.

Q. What?

A. $1.86.

Q. With or without discount?

A. With no discount.

Q. All right.

42818 Now, I refer you to the bidding of December 22, 1936. What was Monolith's bid?

A. $2.062.

Q. Now, I ask you what relation does that have to the bid of $1.86, if any?

A. It is the same thing in the end. It is the same thing after the discount is applied.

Q. After the discount is applied?

A. Both bids are the same.

Q. Then, on the bid of January 14, 1937, what was Monolith's bid?

A. $2.062, subject to discount.

Q. And what relation did that have to the prior bids made by Monolith?

A. It was the same price.

Q. Did any other mill bid that same price on that invitation, according to the information you relied upon in your calculation?

A. Victorville bid exactly the same price.

Q. Did any others bid that same price, except those two?

A. That appears to be the only two.

Q. The next invitation is the invitation you are figuring on, is it not, March 30, 1937?

A. Yes.

Q. What was your rail rate to the destination

42819 point named, as compared with the rail rate of Monolith?

A. It was the same from all four Southern California mills.

Q. In fixing the amount of your bid for the March 30, 1937, bid, what did you attempt to accomplish?

A. Well, we say that in three or four cases back there, that these other mills bidding $2.062, we realized that we could not get any higher figure than that, so we bid that price.

Q. Now, what was the mill net that $2.062 figure would bring to your company; that is, on the March 30, 1937, bid?

A. It would give us $1.462.

Q. Were you interested in business at that mill net?

A. Well, we realized that if we wanted any of that business, we would have to take it at that price.

Q. Were there any subsequent bids on that same project, Mr. Blair?

A. I think there were some small ones.

Q. I show you a copy of a bid, April 14, 1937, and ask you if that is for the same project?

A. Yes; I would say that is for the same project.

Q. Can you tell me from looking at the invitation whether or not you made the bid in reliance on the belief that the same rail-rate would apply as on this other bidding of March 30th?

A. Yes; the same rate would apply to all of this project.

Q. A common rail rate?

A. Yes.

42820 Q. That bid called for—

A. Cement in paper sacks.

Q. And what is your established differential between paper and cloth?

A. Twenty cents.

Q. And what did you bid on that invitation?

A. $1.862, subject to 20 cents discount.

Q. And what relation would that have to a bid of $2.062 in cloth?

A. It would be just exactly the same—the same relationship.

Q. Now, do you know if that same figure was used on other Government bidding at about the same time?

A. Well, that figure of $1.4262 seems to have been used on some other bidding.

Q. Now, Mr. Blair, will you tell me what your policy in bidding is when you find that a competitor has bid a certain mill net at its mill for several consecutive bids?

A. Well, we assume that they are holding that price, and they won't go any higher than that.

Q. Do you have any policy as to your bids on projects where you expect that sort of bidding from a competitor?

A. We could not make our bid higher and expect to get the business.

Q. Whether or not you meet that competition depends on what?

A. How badly we want the business.

42821 Q. And upon anything else? Do your give any consideration to what mill net would be received on the bids?

A. Oh, yes; yes.

Q. Let me ask you, what was the state of the market on Government bidding at about this time?

A. Well, at that time the Government bidding appeared to be a little unstable.

Q. What was your policy in reference to Government bidding during that time?

A. Well, as I said previously, we had hoped to get a higher price, but seen that these other mills were fixing a bid price in their minds, as to what they were going to bid, and in order for us to get any of the business we had to go in and quote the same price.

Q. Well, when the bid price of competitors was less than or brought a mill net less than your commercial business by an amount such as is shown by this bidding, was it your policy to meet or beat competition?

A. In this case it was only to meet competition.

Q. Did you have in mind the likelihood of any result from the beating of a competitive net price?

A. We did not think that they would go below $1.462 because—

Mr. Davis: Will you read the question, Mr. Reporter?

(Question read.)

A. Well, we figured if a price is beaten or lowered, that results in—oh, a keeping on of lowering prices, a

42822 continuious lowering of prices.

Q. Do you remember any particular project on which you later bid this price of $1.862 or $2.62?

A. Well, on a bid to Boulder Dam on April 1, 1937, we used that same price in bidding up there.

Mr. Davis: If Your Honor will bear with me for just a moment, I think I am through, but I may have one other point that I have not covered.

By Mr. Davis:

Q. Mr. Blair, on this Mesa bid of March 30th, are these figures on sheets S and R your figures?

A. They are my figures.

Q. And did you make any suggestion to the management as to the price which should be bid on this invitation?

A. Well, I suggested not to go any lower than $2.062.

Mr. Davis: That is all.

Recross-examination by Mr. Wooden.

Q. You had some mill nets that were lower than $1.462?

A. When?

Q. At the same time.

A. Well, I couldn't tell without searching the rec-
42823 ords on that.

Q. You had lower mill nets in some cases than $1.37, at the time you were quoting $1.37 mill net, had you not?

A. I couldn't tell without going back through the records to determine it.

Q. Don't you know, in general, what the range of your mill nets had been?

A. In 1937 you are asking about?

Q. Yes; that would be this time. Take it first at that.

A. Well, around December 12, 1936, our normal mill net on Los Angeles business was $1.57.

Q. Well, you had some considerably lower mill nets than the one at Los Angeles, did you not?

A. Oh, yes, in a few of the outlying territories, as we have explained in that table.

Q. You had some mill nets running below $1.37 and $1.34?

A. Not according to this table here.

Q. I am not confining it to the points on that table, but you had some destinations at which your mill net was less than $1.37.

A. I don't think so.

42824 Q. I am not concerned with the volume of such business taken at less than $1.37 and $1.34, but you did have some destinations where the mill net was less than $1.37 and $1.34?

Trial Examiner Norwood: Wait a minute. The objection is overruled. Let us find out about it.

A. I don't think we made any shipments to those points.

By Mr. Wooden:

Q. You had price lists showing quotations of individual mill nets less than $1.34 and $1.37?

A. That is in calculations for our own information.

Q. Well, you were willing to sell at such figures, were you not?

A. I don't think we were.

Q. Why were you putting them out if you were not willing to sell at them?

A. Because we covered the points on the station list.

Q. Is not your Los Angeles mill net above your average?

A. At this particular time we were getting $1.53
42825 on our Los Angeles business.

Q. Was that above your average?

A. That was about average.

Q. About average?

A. Yes.

Q. Well, when you say "about," do you mean it was slightly above or slightly below, or what?

A. Well, it would vary by one cent over a whole month's business or a whole year's business, perhaps.

Q. And your San Diego mill net was less than your Los Angeles net?

A. Yes.

Q. Less than the average?

A. Yes.

Q. Not as low as the lowest, though, was it?

A. It was just about as low.

Q. What was it at San Diego?

A. Well, Chula Vista, which is in the San Diego area, would give us a mill net of $1.44.

Q. As of what time?

A. Well, apparently at the time we are speaking of right now, the first part of January.

Q. 1937?

A. That appears how this table is worked out.

Q. January, 1937?

42826 A. That is what I think.

Q. Have you used the expression "whole" mill net?

A. No, I did not.

Q. That is the way I caught the word.

A. No.

Q. You do not know what "whole" mill net?

A. No, no. I never used that expression.

Q. You never heard it used as a synonym for the average mill net?

A. I never heard the expression at all.

Q. You said, I believe, at one time—I did not quite get the time—land-grant rates from all four Southern California mills were made the same.

A. On this particular bidding at—

Q. On Mesa business.

A. On Mesa business, the railroads put in a special rate and equaled the land-grant rate from Monolith.

Q. They put in a special rate and equalized the land-grant rate from Monolith?

A. That is it.

Q. Prior to that time, had Monolith had any advantage?

A. It had the advantage of, I think, of about 12 or 13 cents.

Q. Per barrel?

A. Over us.

Q. Per barrel or per hundredweight?

42827 A. Per barrel.

Q. Did Monolith make any objection or attempt to prevent the granting of this special rate?

A. I don't know what action they took.

Q. I understood you to say that under circumstances and conditions you had made an agreement with individual dealers to quote an f.o.b. mill rate on W. P. A. business. Is that correct?

A. We gave them a mill price that they could use for quoting W. P. A. work.

Q. How was that mill price arrived at?

A. I assume that it was done by deducting the commercial freight from the destination.

Q. In accordance with your usual method?

A. Yes.

Q. In these cases where you prepaid freight to contractors, was not that because the railroads may not have had collection facilities at the delivery point?

A. That would be one reason.

Q. And in the case of the one dealer where you prepaid right along, what was the reason for that?

A. Well, he asked us to do it for him.

Q. There was a collection station at his point, was there?

A. Yes; there was.

Q. You have used the word "unstable" price.
42828 What did you mean by that?

A. Well, I think the best definition of that would be a price below the mill net realized from dealer business.

Q. Do you mean, then, a mill net below the mill net derived from dealers' business?

A. Yes.

Q. Would you call a price unstable where different shippers, cement manufacturers, made a destination price at a given destination that was different from each other?

A. That would be a disorganized market.

Q. Would you call that unstable?

A. Yes; I would.

Q. Would you call it stable if they made the same delivered price?

A. I would say that was stable.

Q. You would not call it unstable, would you, by the mere fact that the different manufacturers derived different mill nets from that stable destination price?

A. If they realized when they made the price that that is what they would realize.

Q. You would not call it unstable because of the mere fact that different manufacturers realized different mill nets on particular destinations?

A. No; I would not call that unstable.

Q. As a matter of fact, in so far as that reflected
42829 the common destination price, you would call it stable?

A. If the prices at destination were firm, that would be stable.

Q. And varying mill nets that reflected that stable destination price would also be stable?

A. I don't see that that enters into it at all.

Q. Well, one is a mathematical difference from the other,—a mathematical derivative from the other; is it not?

A. We work on destination prices. If we are selling cement and if we find that the prices are holding firm, that is what we call a stable market.

Q. Despite the fact that, in order to hold firm at a given destination, the different mills have to take different mill nets?

A. We realize that.

42832 Mr. Wooden: The stipulation agreed to with the Pacific Portland Cement Company is as follows:

It is hereby stipulated by and between Counsel for the Federal Trade Commission and Counsel for Respondent Pacific Portland Cement Company as follows:

1. That if A. H. Canvin, secretary and treasurer, and E. H. Downing, director of sales, Cement Division,
42833 were placed upon the witness stand and duly sworn to testify in the above-entitled proceeding as witnesses for said Respondent they would testify in substantial conformity with the statements set forth in paragraphs 1 to 11, both inclusive, of the offer of proof of Respondent Pacific Portland Cement Company herein, dated June 1, 1940, a copy of which has been duly received by Counsel for the Federal Trade Commission;

42835 Mr. Wooden: The offer of proof of Respondent Pacific Portland Cement Company, covered by the stipulation, is as follows:

Respondent Pacific Portland Cement Company (hereinafter referred to as "Pacific Portland"), hereby offers to prove by A. H. Canvin, secretary and treasurer, and E. H. Downing, Director of Sales, Cement Division, if said Respondent, as witnesses for said Respondent, and by various documents, each and all of the following facts, to-wit:

1. Pacific Portland was incorporated under the laws of the State of California on March 17, 1927.

2. None of the officers or directors of Pacific Portland are officers or directors of any other cement company.

3. The Company's mills are located at Redwood
42836 Harbor, Calif., and San Juan Bautista, Calif.

4. The San Juan Bautista mill has not been in operation since 1930.

5. The capacities of the above named mills are approximately as follows:

Redwood Harbor—2,000,000 barrels per annum.
San Juan Bautista—750,000 barrels per annum.

6. The Company's normal sales area comprises the following:

Northern and Central California, as far south as Bakersfield (the principal market).
Southern California (principally specialty cements).
Hawaii
Oregon
Western Nevada
Washington (only a few shipments).

7. Pacific Portland's sales and shipments to continental purchasers in States other than California average approximately 14 percent of the total sales and shipments, and the sales and shipments to Hawaii average approximately 8 percent of the total sales and shipments.

8. The principal competitors of Pacific Portland are the following:

42837 Northern and Central California and Western Nevada.

Name of Company	Location of Plant.
Henry Cowell Lime & Cement Company, Contra Costa County, Calif.	
Calaveras Cement Company, Kentucky House, Calif.	
Yosemite Cement Corporation, Merced, Calif.	
Santa Cruz Portland Cement Company, Davenport, Calif.	
Permanente Corporation, Permanente, Calif.	
Monolith Cement Company, Monolith, Calif.	
Southern California (principally specialty cements)	
Santa Cruz Portland Cement Company, Davenport, Calif.	
Monolith Cement Company, Monolith, Calif.	
Southwestern Portland Cement Company, Victorville, Calif.	
Riverside Cement Company, Crestmore, Calif.	
California Portland Cement Company, Colton, Calif.	
Hawaii.	
Santa Cruz Portland Cement Company, Davenport, Calif.	
Monolith Cement Company, Monolith, Calif.	
Southwestern Portland Cement Company, Victorville, Calif.	
Riverside Cement Company, Crestmore, Calif.	
California Portland Cement Company, Colton, Calif.	
Oregon.	
Santa Cruz Portland Cement Company, Davenport, Calif.	
Calaveras Cement Company, Kentucky House, Calif.	
42838 Yosemite Cement Corporation, Merced, Calif.	
Oregon Portland Cement Company, Oswego, Ore., also Lime, Ore.	
Beaver Portland Cement Company, Gold Hill, Ore.	
Monolith Cement Company, Monolith, Calif.	

Competition with companies other than those named is sporadic and negligible.

9. The sales policy of Pacific Portland is to sell only to dealers, the United States Government and State governments, railroads, and railroad contractors, contractors doing paving or bridge work for the United States and

State Governments, owners or contractors purchasing for major water development, power development, flood control projects and irrigation districts, manufacturers of cement and concrete products, and commercial concrete mixing plants; Pacific Portland does not sell its products retail. Dealers selected must carry a general line of building material as well as cement. Pacific Portland covers its sales area at the present time by 31 salesmen who are located at points scattered through the sales area.

10. Pacific Portland has never at any time agreed with any competitor, either expressly or impliedly, directly or indirectly, to use or employ any particular system or method of pricing.

11. Pacific Portland has never at any time agreed with any competitor, either expressly or impliedly, di-
42839 rectly or indirectly, to quote the same price as such competitor for cement, at any place, or to any customer, or to make the same bid for any public contract; and in all instances where the price or bid of Pacific Portland has been the same as the price or bid of any of its competitors, such identical prices or bids have been due solely to the fact that Pacific Portland and such competitors probably figured their prices or bids in the same way, and they have not been caused by any express or implied agreement or understanding between Pacific Portland and any of its competitors.

42840 It is hereby stipulated by and between Counsel for the Federal Trade Commission and Counsel for Respondent Yosemite Portland Cement Corporation as follows:

(1) That if Mr. A. H. Van Slyke, secretary of Respondent, were placed upon the witness stand and duly sworn to testify in the above-entitled proceeding, as a witness for said Respondent, he would testify in
42841 substantial conformity with the statements set forth in the offer of proof of Respondent Yosemite Portland Cement Corporation herein, dated June 14, 1940, a copy of which has been duly received by Counsel for the Federal Trade Commission.

42843 Respondent Yosemite Portland Cement Corporation (hereinafter referred to as "Yosemite") hereby offers to prove by witnesses and documents, each and all of the following facts, to-wit:

(1) Yosemite was incorporated under the laws of the

State of Delaware on December 15, 1924. There are issued and outstanding at the present time 257,088 shares of 4 percent non-cumulative preferred stock of the par value of $10 each, 3,525½ shares of class A common stock of the par value of $10 each, and 140,800 shares of class B common stock of the par value of $1 each.

(2) The directors of Yosemite are as follows: Clifford Cole, W. R. Ford, Chaffee E. Hall, R. C. Heaton, Theodore M. Stuart, Yoward G. Tallerday and A. Emory Wishon. None of said directors now is, or ever has been, so far as known, connected with any other cement company.

42844 (3) The officers of Yosemite are as follows: A. Emory Wishon, president; H. G. Tallerday, vice-president; A. H. Van Slyke, secretary; W. R. Couse, assistant secretary and treasurer. None of said officers now is, or ever has been, so far as known, connected with any other cement company, except that Mr. Van Slyke was employed as a salesman and in the traffic department of Pacific Portland Cement Company prior to about 1932.

(4) The principal office of Yosemite is located at Merced, Calif. Its main sales office is located in San Francisco, Calif.

(5) All cement sold by Yosemite is manufactured at its manufacturing plant located about 1½ miles northwest of the City of Merced, Merced County, California. Its deposit of lime rock is located at Emory, which is about 60 miles northeast of Merced on the Yosemite Valley Railroad. The lime rock is transported by rail from Emory to the Merced plant. More than 97 percent of its products are sold in northern and central California. The remaining minor portion of its output is sold in southern Oregon and western Nevada.

(6) Yosemite owns but one manufacturing plant which is located near Merced, Calif., the mill having a capacity of approximately 2,700 barrels per day. The plant has been in operation since about 1927.

(7) The sales policy of Yosemite is to sell only to
42845 dealers, the United States Government and State governments, railroads and railroad contractors, contractors doing paving or bridge work for the United States

and State governments, owners or contractors purchasing for major water development, power development, flood control projects and irrigation districts, manufacturers of cement and concrete products, and commercial concrete mixing plants. Yosemite does not sell its products at retail.

(8) Yosemite cement is sold in competition with the following:

Oregon Portland Cement Company, Linne, Ore., and Oswego, Ore.

Beaver Portland Cement Company, Gold Hill, Ore.

Pacific Portland Cement Company, Redwood City, Calif.

Calaveras Portland Cement Company, San Andreas, Calaveras County, California.

Santa Cruz Portland Cement Company, Davenport, Calif.

Cowell Portland Cement Company, Cowell, Contra Costa County, California.

Riverside Portland Cement Company, Crestmore, Calif.

California Portland Cement Company, Colton, Calif.

Southwestern Portland Cement Company, Victorville, Calif.

42846 Monolith Portland Cement Company, Monolith, Calif.

(9) Yosemite has never at any time agreed with any competitor, either expressly or impliedly, directly or indirectly, to use or employ any particular system or method of pricing.

(10) Yosemite has never at any time agreed with any competitor, either expressly or impliedly, directly or indirectly, to quote the same price as such competitor for cement, at any place, or to any customer, or to make the same bid for any public contract; and in all instances where the price or bid of Yosemite has been the same as the price or bid of any of its competitors, such identical prices or bids have been due solely to the fact that Yosemite and such competitors probably figured their prices or bids in the same way, and they have not been caused by any express or implied agreement or understanding between Yosemite and any of its competitors.

42847 It is hereby stipulated by and between Counsel for the Federal Trade Commission and Counsel for Respondent Calaveras Cement Company as follows:

1. That if Arthur B. Shelby, vice-president and general manager, J. B. Smith, treasurer, and Joseph Tedesco, secretary, each occupying the respective office set after his name in the Calaveras Cement Company, were placed upon the witness stand and duly sworn to testify in the above-entitled proceeding as witnesses for said Respondent, they would testify in substantial conformity with the statements set forth in paragraphs 1 to 10, both inclusive, of the
42848 offer of proof of Respondent Calaveras Cement Company herein, dated June 1, 1940, a copy of which has been duly received by Counsel for the Federal Trade Commission.

42850 1. Calaveras was incorporated under the laws of the State of Delaware on January 13, 1925. There are issued and outstanding at the present time 17,999 shares of preferred stock of the par value of $100 per share and 124,437 shares of common stock of no par value. No bonds or other securities are issued and outstanding.

2. The preferred stock of Calaveras is owned by 294 separate stockholders and the common stock is owned by 370 separate stockholders. No stockholder owns a controlling interest in the company, and, so far as known, none of the stockholders have any connection with any other cement company.

3. The directors of Calaveras are: Louis J. Brunel, S. Waldo Coleman, Spencer Grant, W. L. Honnold, William Wallace Mein, Wm. Wallace Mein, Jr., H. S. Mudd, Stuart L. Rawlings, Stuart L. Rawlings, Jr., Ar-
42851 thur B. Shelby, E. L. Wilhoit. None of said directors now is or ever has been, so far as known, connected with any other cement company, excepting that Arthur B. Shelby, prior to his coming with the Company on June 19, 1927, was connected with the Texas Portland Cement Company. A majority of said directors have been directors of the Company for more than ten years past.

4. The officers of Calaveras are: William Wallace Mein, President; Stuart L. Rawlings, Vice-President; Arthur B. Shelby, Vice-President; T. K. Holmes, Vice-President; Joseph Tedesco, Secretary; J. B. Smith, Treasurer. None of said officers now is or ever has been, so

far as known, connected with any other cement company, excepting that, prior to June 19, 1927, as above stated, Arthur B. Shelby was connected with the Texas Portland Cement Company; prior to July, 1936, T. K. Holmes was connected with the Yosemite Portland Cement Company; and prior to December, 1927, J. B. Smith was connected with the Pacific Portland Cement Company; each in the capacity of an officer.

5. The principal office of Calaveras is in San Francisco, Calif. The Company maintains a branch office in Los Angeles, Calif., for the sale of white cement, but for no other type of cement manufactured by it.

6. All cement sold by Calaveras is manufactured at Kentucky House, San Joaquin County, California, where its manufacturing plant and deposits of raw ma-
12852 terials are located. The mill has a capacity of 1,200,000 barrels per annum. Calaveras manufactures standard Portland cement, high early strength cement, and white cement, as well as special cements required on large Government projects, all of which is marketed under its own brands, the principal one being Calaveras.

The first cement manufactured was in June, 1926. The principal marketing area of Calaveras is in northern and central California, although a small amount of cement is marketed through dealers in Nevada and southern Oregon. In addition, Calaveras bids on municipal, county, State, and federal projects at times in various parts of California, Arizona, Nevada, Oregon, and Washington, depending upon the attractiveness of the business.

7. The sales policy of Calaveras is to sell only to dealers, the United States and State Governments, railroads and railroad contractors, contractors doing paving and bridge work for the United States and State Governments, owners or contractors purchasing for major water development, power development, flood control projects and irrigation districts, manufacturers of cement and concrete products, and commercial concrete mixing plants. Calaveras does not sell its products at retail. Dealers selected by it must carry a general line of building material as well as cement. Approximately fifty percent of the Calaveras output is marketed through dealers. Cala-

veras covers its sales area at the present time by
42853 twelve salesmen who are located at points scattered through the sales area.

8. Calaveras cement is sold in competition with the following:

Santa Cruz Portland Cement Company, Santa Cruz, Calif.

Pacific Portland Cement Company, Redwood City, Calif.

Cowell Portland Cement Company, Cowell, Contra Costa County, California.

Permanente Cement Corporation, Los Altos, Calif.

Yosemite Portland Cement Company, Merced, Calif.

Monolith Portland Cement Company, Monolith, Calif.

Beaver Portland Cement Company, Gold Hill, Ore.

Oregon Portland Cement Company, Lime, Ore., and Oswego, Ore.

Riversitle Portland Cement Company, Crestmore, Calif.

California Portland Cement Company, Colton, Calif.

Southwestern Portland Cement Company, Victorville, Calif.

9. Calaveras has never at any time agreed with any competitor, either expressly or impliedly, directly or indirectly, to use or employ any particular system or method of pricing, or marketing.

42854 10. Calaveras has never at any time agreed with any competitor, either expressly or impliedly, directly or indirectly, to quote the same price as such competitor for cement, at any place, or to any customer, or to make the same bid for any public contract; and in all instances where the price or bid of Calaveras has been the same as the price or bid of any of its competitors, such identical prices or bids have been due solely to the fact that Calaveras and such competitors probably figured their prices or bids in the same way, and they have not been caused by any express or implied agreement or understanding between Calaveras and any of its competitors.

42855 It is hereby stipulated by and between Counsel for the Federal Trade Commission and Counsel for Respondent Santa Cruz Portland Cement Company as follows:

(1) That if George R. Gay, the Vice-President and

General Manager of said Respondent was placed upon the witness stand and duly sworn to testify in the above-entitled proceedings as a witness for said Respondent, he would testify in substantial conformity with the statements set forth in paragraphs (1) to (13), both inclusive, of the offer of proof of Respondent Santa Cruz Portland Cement Company herein, dated June 15, 1940, a copy of which has been duly received by Counsel for the Federal Trade Commission.

42858 Mr. Wooden: I also present the offer of proof accompanying and covered by the stipulation by the Santa Cruz Portland Cement Company, as follows:

Respondent Santa Cruz Portland Cement Company (hereinafter referred to as "Santa Cruz") hereby offers to prove, by various witnesses and documents, each and all of the following facts, to-wit:

(1) Santa Cruz was incorporated under the laws of the State of California on June 2, 1905. There are issued and outstanding at the present time 100,000 shares of common capital stock of a par value of $50 per share; no bonds or other securities are issued and outstanding.

(2) The capital stock is owned by 274 separate stockholders, but more than 50 percent of the entire issued and outstanding capital stock is owned and held, either directly or indirectly, by the heirs of the late W. H. Crocker of San Francisco. So far as is known, none of the Crocker heirs now has, or ever did have, any connection with any other cement company.

(3) The directors of Santa Cruz are as follows: George T. Cameron, W. W. Crocker, D. J. Murphy, Roland C. Foerster, Walter H. Sullivan, R. A. Kinzie and George R. Gay. None of said directors now is, or ever has been, so far as known, connected with any other cement company. A majority of said directors have
42859 been directors of Santa Cruz for more than 10 years each.

(4) The officers of Santa Cruz are as follows: George T. Cameron, President; D. J. Murphy, Vice President and Secretary; George R. Gay, Vice-President and General Manager; F. H. Herbert, Assistant Secretary. Mr. Cameron has been president of Santa Cruz for more than 30 years; Mr. Gay has been connected with the

company for over 30 years and has been general manager for more than 20 years. None of said officers now is, or ever has been, so far as known, connected with any other cement company.

(5) The principal office of Santa Cruz is located in San Francisco. Branch offices are located at Stockton, Sacramento, Santa Rosa, San Jose and Fresno, Calif., and Portland, Ore.

(6) All cement sold by Santa Cruz is manufactured at Davenport, Santa Cruz County, California, where its manufacturing plant and deposits of raw material are located. From this point cement is distributed by its boat, the SS "Santacruzcement," in lots of approximately 40,000 barrels, to silos at Portland, Ore., and Alameda, Stockton and Long Beach, Calif. These silos are equipped with packing facilities the same as is the plant at Davenport, and from these silos cement is distributed by rail or truck to the various parts of the States of Washington, Oregon, California, Nevada and Arizona.

42860 (7) Santa Cruz owns but one manufacturing plant which is located at Davenport, Calif., the mills having a capacity of approximately 10,000 barrels per day, although the demand for cement has never permitted its being operated to this volume. The quantities of raw lime rock and silica from which the cement is manufactured are located in a deep canyon three miles from the plant. The rock is transported to the mill by an electric railway owned by the company. Fuel oil, power, and other supplies are purchased elsewhere. It is estimated the supply of raw materials on the present production basis will extend over 50 years. The plant was located at Davenport to take advantage of the rail and water facilities available for shipping and for the incoming supplies. About four years ago, Santa Cruz decided to take advantage of its location on the Pacific Ocean and established a pier extending from its plant directly into the ocean a distance of 2,650 feet to a water depth of 50 feet. At this point the SS "Santacruzcement" is moored to buoys. The cement is transported to 14-inch air lines extending from the plant to the steamer, where it is loaded at the rate of approximately 2,000 barrels per hour. The silos in California, referred to above, into which the cement is pumped directly from the steamer,

each have a capacity of 60,000 barrels, while the silos at Portland, Ore., have a capacity of 70,000 barrels.

(8) The first shipment of cement was made from
42861 the plant of Santa Cruz at Davenport, Calif., on May 17, 1907. From this point cement was distributed at that time as far north as British Columbia, and as far south as the State of New Mexico, being sold in competition with cement imported from points outside the United States, and rail shipments were made as far east as Colorado, the latter in competition with cement being shipped from Kansas and points further east. As time went on Santa Cruz was compelled to restrict its shipments to points nearer its mill owing to the competition of plants more advantageously located with regard to freight rates, until finally the company was compelled to restrict its shipments principally to California and Oregon. Subsequently new mills were constructed even within this territory and some four years ago it was decided to build a transportation system which now enables it to again extend its markets to the States of Oregon, Washington, California and Arizona. Included within the territory of Santa Cruz is the southern part of the State of Washington, where freight rates permit it to ship in competition, the western part of the State of Oregon, where freight rates permit it to ship in competition, all of the State of California, and western Nevada, where freight rates permit it to ship in competition, and certain points in Arizona. The principal markets within these areas are Portland, Ore., San Francisco, San Fran-
cisco Bay area, and Los Angeles, Calif. Of the
42862 total output in 1939, approximately 20 percent was shipped to points in the State of Washington, approximately 3 percent to Honolulu, approximately 26 percent to Southern California and Arizona, approximately three-tenths of one percent having been shipped to Arizona, and the balance of approximately 47 percent to Northern California.

(8a) The low cost of water transportation to the States of Washington and Oregon or the influence of low water transportation on rail rates permits Santa Cruz to compete in those two States. The lower cost of water transportation to Long Beach, Calif., permits Santa Cruz to make shipments to Arizona.

(9) The sales policy of Santa Cruz is to sell only to dealers, the United States Government and State Governments; railroads and railroad contractors, contractors doing paving or bridge work for the United States and State Governments, owners or contractors purchasing for major water development, power development, flood control projects and irrigation districts, manufacturers of cement and concrete products, and commercial concrete mixing plants; Santa Cruz does not sell its products retail. Dealers selected must carry a general line of building material as well as cement. Santa Cruz covers its sales area at the present time by twelve salesmen who are located at points scattered through the sales area.

(10) Santa Cruz cement is sold in competition
42863 with the following:

Oregon Portland Cement Company, Linie, Ore., and Oswego, Ore.

Beaver Portland Cement Company, Gold Hill, Ore.

Pacific Portland Cement Company, Redwood City, Calif.

Calaveras Portland Cement Company, San Andreas, Calaveras County, California.

Yosemite Portland Cement Company, Merced, Calif.

Cowell Portland Cement Company, Cowell, Contra Costa County, Calif.

Riverside Portland Cement Company, Crestmore, Calif.

California Portland Cement Company, Colton, Calif.

Southwestern Portland Cement Company, Victorville, Calif.

Monolith Portland Cement Company, Monolith, Calif.

(11) The plant of Santa Cruz has been in continuous operation since May, 1907. Its deposit at Davenport, Calif., is regarded as one of the most available deposits of raw materials in California, due to the extent of the deposit and its proximity to water and rail transportation and consuming markets.

(12) Santa Cruz has never at any time agreed with any competitor, either expressly or impliedly, di-
42864 rectly or indirectly, to use or employ any particular system or method of pricing.

(13) Santa Cruz has never at any time agreed with any competitor, either expressly or impliedly, directly or indirectly, to quote the same price as such competitor for cement, at any place, or to any customer, or to make the same bid for any public contract; and in all instances

where the price or bid of Santa Cruz has been the same as the price or bid of any of its competitors, such identical prices or bids have been due solely to the fact that Santa Cruz and such competitors probably figured their prices or bids in the same way, and they have not been caused by any express or implied agreement or understanding between Santa Cruz and any of its competitors.

42865 I now present a stipulation with regard to an offer of proof by the Riverside Cement Company, which stipulation is as follows:

It is hereby stipulated, by and between Counsel for the Federal Trade Commission and Counsel for Respondent Riverside Cement Company, as follows:

1. That if Garner A. Beckett and Warren H. Leonard, President and Vice-President and General Manager, respectively, of said Respondent (hereinafter referred to as "witnesses") were placed upon the witness stand and duly sworn to testify in the above-entitled proceeding as witnesses for said Respondent, either one or the other or both of said witnesses would testify in substantial conformity with the statements set forth in paragraphs 1 to 88, both inclusive, of the offer of proof of Respondent Riverside Cement Company herein, dated June 17, 1940, a copy of which has been duly received by Counsel for the Federal Trade Commission.

2. That it may be deemed that such witnesses have been so placed upon the stand and duly sworn; that
42866 they have so testified; that said offer of proof, including the volume of exhibits referred to therein, may be marked as an exhibit in this case, and that said paragraphs 1 to 88, both inclusive, of said offer of proof, may stand as evidence of the testimony of said witnesses and as evidence introduced in support of the defense of Respondent Riverside Cement Company, herein, including as a part of such evidence any and all exhibits referred to in said offer of proof; subject, however, to the right of Counsel for the Federal Trade Commission, to urge any and all objections to the materiality or relevancy of said evidence, or any part thereof.

3. The personal presence or production of said witnesses, or either of them, either at the hearings herein or upon the witness stand at said hearings or any thereof, and as well the right to cross-examine said witnesses or

either of them, is hereby expressly waived by the Federal Trade Commission and its Counsel; provided that otherwise, and to the extent that the same are not inconsistent with the terms and conditions of this stipulation, the terms and conditions of the stipulation relative to the testimony of Charles Horner, appearing at page 36801 of the transcript herein, shall be deemed to apply to the testimony of said witnesses and each of them.

4. It is an inseparable condition of this stipulation that nothing herein contained shall be deemed to con-
42867 stitute any admission whatever on the part of either the Federal Trade Commission or its Counsel that any of the statements contained in said paragraphs 1 to 88, both inclusive, are true.

The sole purpose and intention of this stipulation is to shorten the hearing of the above-entitled proceeding and to enable Respondent Riverside Cement Company to put in its defense herein without the necessity of sending Counsel and witnesses from Los Angeles, Calif., to Washington, D. C.

Mr. Woodlen: I also present an offer of proof submitted by the Riverside Cement Company, which is covered by the stipulation just referred to, and which is as follows:

Respondent Riverside Cement Company hereby offers to prove each and all of the facts hereinafter set forth, to wit:

1. Riverside Cement Company (hereinafter for brevity referred to as "Riverside") was incorporated in the State of Delaware on April 10, 1928.

2. Riverside's stock structure is as follows:

(a) Authorized:

70,000 shares $6 Cumulative First Preferred

240,000 shares $1.25 Cumulative Participating, Di-
vided Class "A"

400,000 shares Class "B"

42868 All of no par value.

(b) Outstanding:

33,973 Preferred

240,000 Class "A"

345,000 Class "B"

3. Riverside's stockholders number approximately 1,900 persons.

4. Riverside's directors are the following:
Garner A. Beckett
Warren H. Leonard
Frank E. McCann
Thomas D. Henshaw
Dudley Dexter
Griffith Henshaw
Henry D. Nichols
Wm. H. Metcalf
Allen L. Chickering.

5. Riverside's principal officers are as follows:
Garner A. Beckett, President
Norman Macbeth, vice president in charge of sales
Warren H. Leonard, vice president and general manager
Earl MacDonald, vice-president in charge of operations
Thomas D. Henshaw, secretary-treasurer.

6. None of the officers or directors of Riverside are officers or directors of any other cement company.

7. Riverside's business offices are located at 621 South Hope Street, Los Angeles, Calif. (the principal office), and 200 Bush Street San Francisco, Calif.

8. The mills of the company are located at Crestmore, Calif., and Oro Grande, Calif.

9. The Oro Grande mill has not been in operation since 1928.

10. The capacities of the above named mills are approximately as follows:
Crestmore, 3,000,000 barrels annually.
Oro Grande, 1,500,000 barrels annually.

11. The company's normal sales area comprises the following:
Southern California (the principal market)
San Joaquin Valley (southern portion)
Arizona (primarily the western portion bounded on the east by Tucson and Phoenix)
Southern Nevada (primarily the Las Vegas area).

12. The company's principal sales centers in the above area are as follows:
Los Angeles Metropolitan area
San Diego.

13. The principal competitors of Riverside are the following:
California Portland Cement Company; office, Los Angeles; plant, Colton, Calif.

Southwestern Portland Cement Company; office,
42870 Los Angeles; plants, Victorville, Calif., and El Paso, Texas.

Monolith Portland Cement Company; office, Los Angeles; plant, Monolith, Calif.

Santa Cruz Portland Cement Company; office, Crocker Building, San Francisco; plant, Davenport, Calif.; silos, Long Beach, Calif.

Blue Diamond Corporation; office, Los Angeles; plant, Los Angeles.

Competition with companies other than those named is sporadic and negligible.

14. Prior to about 1892 all cement used in Southern California was imported from Europe.

15. Prices were made in those days upon a basis of European cost, plus ocean and local rail transportation, together with such profits as the importer might be able to realize.

16. About 1892 a small plant commenced to operate at Colton, producing domestic cement which was sold at a discount from the foreign product.

17. About that same time, a small amount of Golden Gate cement manufactured in Northern California, began to appear in Southern California, also selling at a discount from the foreign product.

18. During this period the foreign cement was considered superior in quality to the domestic, and was
42871 often definitely specified for use on jobs.

19. About 1905, Kansas mills commenced to ship to Los Angeles, at first selling at a price lower than that of the foreign cement and generally higher than that of the California brand.

20. About 1907 or 1908, Santa Cruz cement and other California brands entered the market.

21. By this time the American brands had become dominant.

22. Prices during this period varied from $2.10 per barrel to over $3 per barrel. On upswings, the result was to attract cement from American production centers even further removed than Kansas.

23. By 1908 Kansas cement was selling at $2.30 per barrel in Los Angeles. The freight rate from Kansas to Los Angeles at that time was $1.33 per barrel. This was a terminal rate applicable only to Los Angeles.

24. The manufacturers of Golden Gate cement in that year established a price of $2.10 per barrel in Los Angeles, to which price the Kansas mills gradually descended as inroads were made upon their business.

25. In 1910, Riverside Portland Cement Company, the predecessor of Riverside, came into the Southern California field.

26. At that time the price at Los Angeles was $2
42872 per barrel. The Kansas mills gradually withd[illegible]w from the market.

27. Prices to the surrounding communities were arrived at by adding freight from Los Angeles to the price of $2 at Los Angeles.

28. This method continued until about 1917, when the War Industries Board designated the Crestmore mill of Riverside Portland Cement Company as the basing point for Southern California.

29. Thereafter, during the period of the war maximum emergency prices at Los Angeles and Southern California destinations generally were fixed by the War Industries Board as the Crestmore base price plus freight to destination.

30. Riverside's price lists reflected the policy of basing on Crestmore until about 1927, when due to the activity in the Los Angeles Metropolitan area and to the prevalence of local trucking of cement, it became impractical to observe disparities in prices reflecting rail freight differentials between nearby or adjacent communities. The establishment of zone prices (hereinafter referred to) followed.

(Explanatory note: Unless otherwise indicated, the statements hereinafter made have reference both to the present time and to the period of time referred to in the complaint herein.)

31. Riverside ordinarily sells upon a delivered
42873 price basis, subject to the exceptions hereinafter noted.

32. It has been the experience of Riverside that practically all commercial customers prefer quotations at destination and destination delivery. Contractors prefer f.o.b. job delivery to f.o.b. cars or f.o.b. mill. Dealers prefer destination prices to f.o.b. mill prices. Political subdivisions not enjoying reduced transportation charges prefer destination or job delivery and prices.

33. On the other hand, any purchaser who possesses a transportation cost advantage not shared in common with the ordinary commercial purchaser, will, in Riverside's experience, desire to take delivery at the mill in order to obtain the benefit of such transportation cost advantage.

34. This applies particularly to governmental or other public agencies entitled to the benefit of land grant or other special rates, and to railroads which may move cement purchased for their own use over their own lines at an arbitrary charge.

35. Riverside sells f.o.b. mill to railroads and as otherwise noted herein.

37. On intra-state commercial business in California, Riverside sells upon a basis of zone prices within various zones as reflected in its price lists and zone maps heretofore introduced in evidence. No zone map has been issued by Riverside since April, 1936. Quotations outside
42874 of the zones are generally the equivalent of competitors' current quotations at destination, although at times at some destinations they are lower than competitors' quotations.

38. The zone method of quoting prices was first put into effect by Riverside in 1927.

39. The reasons for the adoption of the zone system were primarily the following:

40. The Los Angeles Metropolitan area consists of numerous contiguous communities, to many of which a different rail freight rate from Riverside's mill was applicable. The rail rates as between different destinations within such area varied, so that a dealer located in one community or section under a system of price base plus freight, was required to pay a higher price for his cement than a dealer in an adjacent community. The result was that the former could not compete with his more advantageously situated neighbor, who did not hesitate to truck in his territory. Riverside was besieged by complaints from these disadvantageously located dealers, and in order to allow them to compete on an equal basis with other dealers within the area, the zone system was adopted. Gradually it spread throughout the whole of Southern California where cement is purchased.

41. Riverside's sales to purchasers in States other than California average approximately six per cent of its total

sales value. Negligible quantities are at times
42875 shipped to Hawaii.

44. Both as to sales to purchasers without and within the State of California, where such sales are made in territories in which Riverside's competitors have a freight (rail, boat or truck) advantage, or, in order to meet competition generally—sales are made by Riverside at the then current price in the particular market involved.

45. On sales to governmental agencies for ultimate use within or without the State of California, Riverside's practice is to permit the Government to take delivery at the mill and ship on Government bill of lading at the land grant or any other special or reduced rate which may be applicable. Exhibit A (Respondents' Exhibit No. 3450-A to 3450-Z-10, for identification), as set forth in the volume of exhibits entitled "Offer of Proof—Volume of Exhibits," and filed herewith, which is by this reference thereto made a part hereof as if herein set forth in full, is a list of bids illustrating this practice.

46. Riverside believes in and follows an open price policy. It is its practice to mail its price lists to dealers, secretaries of dealer associations, other California cement companies, including its competitors, public purchasing agents and railroads.

47. Riverside meets price declines instituted by other companies. As to price rises instituted by others,
42876 Riverside regards it as optional as to whether or not it will follow the same, dependent upon its judgment of general market conditions, its views as to possible or probable dealer or consumer reaction, and the threat of competitive materials.

48. Riverside institutes price changes whenever in the judgment of the executives of the company the current published list does not generally reflect the price at which its products will sell.

49. Exhibit B (Respondents' Exhibit No. 3451, for identification), as set forth in the volume of exhibits entitled "Offer of Proof—Volume of Exhibits," and filed herewith, which is by this reference thereto made a part hereof as is herein set forth in full, is a chart of delivered prices since January 1, 1930, in the City of Los Angeles, Calif., showing price changes and the company initiating the same.

50. Exhibit C (Respondents' Exhibit No. 3452, for identification), as set forth in the volume of exhibits entitled

"Offer of Proof—Volume of Exhibits" and filed herewith, which is by this reference thereto made a part hereof as if herein set forth in full, is a chart of delivered prices since January 1, 1930, in the City of Phoenix, Ariz., showing price changes in that area and the company initiating the same.

51. As shown by the evidence herein, Riverside has participated in a number of joint bids to governmental, State and municipal agencies.

42877 52. In each of such joint bids, the facts in connection therewith and the reasons for the making of the bid in joint form were fully disclosed to the public agency involved.

53. Except as herein elsewhere stated, Riverside has no business contacts whatever with any of the Respondent companies named in the complaint.

54. Riverside was a member of The Cement Institute from June 15, 1933, to November 1, 1939. It is not now a member. It joined the Institute in order to have a voice in the formulation of the Cement Code.

55. Both during and after the Code period, Riverside was primarily, if not solely, interested in the work of the Marketing Research Committee.

56. John Treanor, former president of Riverside, was a member of that committee and devoted his best efforts to acquainting the Federal Trade Commission with the marketing problems of the industry from the manufacturer's standpoint, in the hope that a constructive program satisfactory to the Commission and to the industry could be worked out. In this connection, F.T.C. Exhibit 571-9-K—12-N is hereby referred to and made a part hereof, as if herein set forth in full, and is hereby offered in evidence.

57. Since the death of John Treanor in 1935, Riverside has not been represented upon the Marketing Research Committee and has taken no part in any Cement In-42878 stitute activity. It has since that date received circulars and other matter sent out from time to time to the Institute's general mailing list.

58. At no time did The Cement Institute have anything to do with the formulation or carrying out of Riverside's business or sales policies or practices. This statement does not apply to the Cement Code Authority during the time it was in existence.

59. Riverside was also a member of the Pacific Coast Cement Institute from December, 1936, to August, 1939.

60. Riverside did, from time to time, receive from the Pacific Coast Cement Institute information on land-grant freight rates, which latter information, however, Riverside made but little use of, preferring to obtain its data in this regard direct from the railroads themselves.

61. At no time did the Pacific Coast Cement Institute have anything to do with the formulation or carrying out of Riverside's business or sales policies or practices.

62. Riverside is and has been for more than ten years a member of the Portland Cement Association.

63. That Association is a promotional, educational and research organization to promote and extend the uses of concrete. Its purposes relate merely to the development of the use of cement in connection with competitive materials and to the improvement of the quality of the
42879 cement which goes into making concrete, as well as the improvement of the concrete itself.

64. At no time did the Portland Cement Association have anything to do with the formulation or carrying out of Riverside's business or sales policies or practices.

67. Delivered cement prices in the area served by Riverside are determined (a) by reference to the current price list, or (b) by information picked up in the field by salesmen; in either case, wholly without reference to or use of the factors of base price and all-rail freight. In quoting or changing its prices, Riverside makes no use of such a formula as the prevailing price at the governing basing point plus an all-rail rate of freight therefrom to the location of the customer.

68. Riverside did not participate in any of the bids referred to in paragraph sixth of the complaint.

69. Exhibit D (Respondents' Exhibit 3453-A to 3453-S, for identification), as set forth in the volume of exhibits entitled "Offer of Proof—Volume of Exhibits" and filed herewith, which is by this reference thereto made a part hereof as if herein set forth in full, is a list of bids to public agencies participated in by Riverside within its own selling area. This list is not intended to be exclusive or a complete enumeration of such bids.

70. The freight rate books referred to in subparagraph (a) of Paragraph Seventh of the complaint,
42880 have never been used by Riverside. No such books have ever been published for Riverside's marketing area.

71. Riverside has sold cement for truck delivery since 1926. In that year the company established a price for shipments picked up by truck at its mill. The movement of cement by truck from Riverside's mill has constantly increased, and at the present time approximately 92 percent of its deliveries are made by truck.

72. Riverside sells f.o.b. trucks at mill without premium.

73. Riverside at the present time operates 16 plant facility trucks in moving its cement from mill to destination.

74. The policy of Riverside is opposed to diversion of shipments for the following reasons:

(a) A concession in delivered price arising from such a diversion as that mentioned in the complaint (subdivision (c) of Paragraph Seventh) would be an improper and illegal discrimination in price in favor of the transferee therein mentioned.

(b) On sales where delivery to a given job is specified, a diversion would lead to a loss of the company's materialman's lien rights on such job. Expansive investigation, tracing and proof would then be required in order to reestablish such lien rights.

75. It is the policy of Riverside at all times to 42881 cooperate with the Government and other public agencies, to the end that the full benefit of land-grant or other special rates may be secured to the department or agency inviting bids.

76. Riverside does not, either by use of a "control clause" or otherwise, prevent the Government or any public agency from realizing the full benefit of any available land grant or other special or reduced rate.

77. Riverside sells direct to the classes of customers specified in Exhibit E (Respondents' Exhibit 3454-A to 3454-L, for identification), hereinafter referred to. In the past it has sold direct to the classes specified in its price lists in evidence.

78. Riverside defines "cement dealers" as follows:

"A cement dealer as used herein is one who has an established place of business where he is regularly engaged in promoting the use and sale of cement and other building supplies to the public, with facilities to serve the retail trade in a given territory and able and willing to perform all functions devolving upon him in securing, performing and protecting orders and contracts for the delivery of cement on his own account."

79. Riverside's terms of sale and discounts in the past are shown by its price lists in evidence. At present they are as shown in its current price list for California,
42882 Exhibit E (Respondents' Exhibit No. 3454-A to 3454-L, for identification), as set forth in the volume of exhibits entitled "Offer of Proof—Volume of Exhibits" and filed herewith, which is by this reference thereto made a part hereof as if herein set forth in full.

80. No appreciable quantity of foreign cement has been imported into Riverside's sales area in the last ten years.

81. Riverside participated in none of the shipments referred to in Paragraph Seventh of Count Two of the complaint.

82. Riverside bid on the Stewart Mountain Dam project (March 20, 1936) $3.32 per barrel f.o.b. Mesa, Ariz., less sack allowance and discount, with commercial freight allowed. This was the equivalent of a bid of $1.523 at mill. The net delivered cost to the Government at destination per land-grant rate on Government bill of lading, was $2.446199. Pacific, the low bidder, also bid $3.32, Mesa, on the same terms, with a resulting land-grant delivered cost to the Government of $2.29136. There were eight bidders in all, and the net delivered cost to the Government was different as to each bidder. In this connection, F.T.C. Exhibit 118-A, B, is, by this reference thereto, made a part hereof as if herein set forth in full.

83. Riverside's bid on the proposals for cement issued April 29, 1938, by the Treasury Department, Pro-
42883 curement Division (opening May 12, 1938), was qualified as set forth in that certain letter of May 10, 1938, from Garner A. Beckett, president of Riverside, to the Procurement Division, a copy of which letter is Exhibit F (Respondents' Exhibit No. 3455-A to 3455-C, for identification), as set forth in the volume of exhibits entitled "Offer of Proof—Volume of Exhibits" and filed herewith, which is by this reference thereto made a part hereof as if herein set forth in full. Riverside's reasons for so qualifying said bid were as set forth in said Exhibit F.

84. Reference is made to F.T.C. Exhibit 132-A—E. On the Boulder Dam bid opening April 24, 1933, the joint bidders, of whom Riverside was one, bid $1.55 f.o.b. mill for special low heat cement. Previously they had bid $1.24 and $1.28 f.o.b. mill on standard Portland cement. The disparity in the bid figures as between the two types of

cement was caused by the fact that the Government in its specifications had included several requirements which involved greater manufacturing risks without improving the quality of the product. The companies were therefore forced to bid a higher price and the bids were ultimately rejected. Garner A. Beckett of the Riverside personally took the bid to Denver and explained to the Government officials there why it was impossible for the companies to bid lower. Thereafter the specifications were changed so as to eliminate the special requirements and a new
42884 joint bid for the special low heat cement was submitted, upon which award was ultimately made at a figure of $1.40.

85. Reference is made to F.T.C. Exhibit 562-7-K. The letter in question related to an exchange of freight rate information between joint bidders and having reference to the destination at which the cement involved in the joint bid was to be used.

86. F.T.C. Exhibit 571-4-W is a telegram advising Pacific Portland of a price change. This telegram was sent in accordance with Riverside's established policy of broadcasting its prices.

87. The price change referred to in paragraph 86 was not followed and a new, different, and lower price was ultimately established by one of Riverside's competitors.

88. F.T.C. Exhibit 1299 reflects the ten year fight between the inner and outer mills in Southern California over rail freight differentials before the California Railroad Commission. At the time a differential favorable to the inner mills (Riverside and California Portland) was in effect. Hence the latter were back on the rails. The limitation of truck loading hours referred to in the exhibit was never actually put into effect.

The reference to simultaneous action in the exhibit reflects the simple fact that in all matters relating to this transportation fight the inner mills made common
42885 cause as against the outer mills in working to influence the Railroad Commission and the railroads to maintain a proper differential in rates reflecting the superior geographic position of the two inner mills with reference to the Los Angeles market.

Mr. Wooden: The offer of proof of the Riverside
42886 Cement Company is presented, subject to the following objections:

Paragraph 2 is objected to as immaterial.

Paragraphs 14 to 22, inclusive, are objected to as immaterial.

Referring to paragraph numbered 56 of the offer of proof, which makes an offer of a certain exhibit heretofore marked for identification as Commission's Exhibit 571-9-K to 12-N, inclusive, the offer of that exhibit is objected to as being incompetent and self-serving.

I want to add to that objection that portions of that exhibit contain irrelevant and immaterial subject matter relating to subjects involving costs, profits, losses, and earnings.

I object to paragraph 74 of the Riverside Cement Company offer of proof, on the ground that it is a statement of legal conclusions, and argumentative.

Now, as to the Riverside exhibits that have been marked for identification, and which were presented with the offer of proof, I object to what are numbered by the company as Exhibits A, D, and E, which are now marked as Respondents' Exhibits 3450-A to Z-10, 3451, 3452, 3453-A to S, 3454-A to L, and 3455-A to C.

I object to Respondents' Exhibit 3453 as immaterial.

I object to Respondents' Exhibit 3454 as immaterial.

42887 I object to Respondents' Exhibit 3455 as argumentative and self-serving.

42891 Mr. Wooden: I now present, Your Honor, a stipulation agreed to with Counsel for the Superior Portland Cement, Inc., which is as follows:

42892 It is hereby stipulated that if Gordon W. R. Tongue, sales manager, treasurer, member of the Executive Committee, and trustee of the Superior Portland Cement, Inc., were to testify on his examination with respect to the matters hereinafter indicated he would give as his testimony with respect to those matters the statement hereinafter set forth:

(a) the statements herein set forth may be read into the record as constituting the testimony of the witness with respect to those matters with the same force and effect as if the witness had actually given the testimony on his direct examination.

(b) The statements contained in this stipulation shall be given the same weight as if oral testimony had been offered to the same effect, and no inference shall be drawn, or any argument made, adverse to the weight or effect of

such testimony by reason of the manner in which it is incorporated in the record through this stipulation.

(c) Counsel for the Commission shall have the right to move to strike any portion of this stipulation and said motions shall have the same force and effect as though Counsel for the Commission had made objections to questions propounded to and answers given by the witness were he to testify orally. Said motions to strike shall be deemed to have been made as objections for all purposes of this record prior to any statement made by the witness.

42893 1. There are six cement plants in the State of Washington as follows, to-wit:

(a) The concrete plant of the Superior Portland Cement, Inc., which began production in 1908.

(b) The plant of the Olympic Portland Cement Company, Ltd., located at Bellingham, Wash., which began production in 1911.

(c) The plant of the Spokane Portland Cement Company located at Irvin, Wash., which began production in 1912.

(d) The plant of the Lehigh Portland Cement Company located at Metaline Falls, Wash., and which began production in 1913.

(e) The plant of the Northwestern Portland Cement Company located at Grotton, Wash., and which began production in 1928.

(f) The plant of the Pacific Coast Cement Company located at Seattle, Wash., and which began production in 1929. This plant is now leased to the Superior Portland Cement, Inc.

The following mills also compete with us in the State of Washington, to-wit:

Washington Idaho Lime Products Company, Orofino, Idaho.

Oregon Portland Cement Company, Lime, Ore.

Oregon Portland Cement Company, Oswego, Ore.

Beaver Portland Cement Company, Gold Hill, Ore.

42894 Pacific Portland Cement Company, Redwood City, Calif.

Santa Cruz Portland Cement Company, Davenport, Calif., and Portland, Ore.

Monolith Portland Cement Company, Monolith, Calif.

The plant owned by our company was located at Con-

crete, Wash., because of the proximity of huge deposits of commercially available and satisfactory lime rock and we estimate that the reserves of such lime rock are at least sufficient for the operation of our mill to capacity for more than a hundred years.

Furthermore, since the plant was constructed in 1908 the company has spent thousands of dollars annually in the installation from time to time of more efficient machinery and equipment and in the modernization of its plant, storage and delivery facilities in order to place itself in the best possible position to effectively compete with other companies.

2. None of the officers, none of the members of the executive committee, and none of the members of the board of trustees of the Superior Portland Cement, Inc., are officers or directors of any other cement company, and no officer or director or trustee of any other cement company is an officer or director, or has any position of management or control in the Superior Portland Cement, Inc.

3. The Superior Portland Cement, Inc., was never
42895 a member of the Cement Manufacturers Protective Association. It did not become a member of The Cement Institute until in 1933 at or about the time the Code for the Cement Industry was set up under the N.R.A. This Respondent has never contracted for, nor received nor used freight rate books, contract checking services, credit reporting services or any other special services which may have been furnished by The Cement Institute. As I have indicated, our company did cooperate with The Cement Institute in efforts to obtain tariff legislation to prevent the dumping of foreign cement, but as I will later explain, it has never, either individually or with others, boycotted or threatened to boycott foreign cement or dealers of others who handled the same.

The Cement Institute performed valuable services for our company in assisting us in obtaining refunds of compensating processing taxes on paper bags.

Our company has received from month to month during its membership in The Cement Institute statistics on clinker production, percent of clinker production, cement shipments, percent of cement shipments and clinker and cement stocks. These reports are of no significance as far as our company is concerned. They are not used and have never been used in connection with our sales and marketing prac-

tices. Furthermore, our company does not send in any such statistics to The Cement Institute. The company, however, does send in statistics to the Bureau of
42896 Mines as requested by the Bureau. Furthermore, our company has never given any information to The Cement Institute or any other organization or person on cement contracts awarded and so far as I know, no reports are made by The Cement Institute or any other organization or person on cement contracts awarded for Bureau of Mines, District No. 12, the district in which our company is situated, and if such reports are made our company has no knowledge thereof and has never received or made use of any such information.

4. Our company has never entered into any agreement with any other cement company or the representatives of any other cement company, or with The Cement Institute or any representative thereof as to the contract forms which it employs. It has never been the general practice of this company to use specific sales contract forms for sales to dealers or others in the ordinary course of business. They have been used only to a very limited extent. Prior to March, 1930, our company had no printed contract forms but used typewritten contracts to fit special cases. About March, 1930, the company had its first contract form printed and a sample copy is attached hereto, marked Respondents' Exhibit No. 3456. This was used until February, 1931, at which time the form was re-printed identical in form with the preceding forms except that the words "Superior High-Early-Strength Cement" are changed to "Superior Hyurly Cement."

42897 The company's contract forms were reprinted on March 13, 1934, and were headed "Specific Sales Contract," a sample of which is attached hereto, marked Respondents' Exhibit No. 3457. A comparison of these two forms of contract with the form submitted with the original N.R.A. Code and with the so-called Compendium indicates substantial differences.

Specific work quotation forms have been used by this company only since the Code period. The first form was printed March 13, 1934, a sample of which is attached hereto marked Respondents' Exhibit No. 3458-A and 3458-B. This form was reprinted December 31, 1934, a sample of which is attached hereto marked Respondents' Exhibit No. 3459-A and 3459-B; reprinted June 15, 1935, a sample of

which is attached hereto marked Respondents' Exhibit No. 3460-A and 3460-B; next reprinted April 22, 1937, a sample of which is attached hereto marked Respondents' Exhibit No. 3461-A and 3461-B, and again reprinted January 9, 1940, a sample of which is attached hereto marked Respondents' Exhibit No. 3462-A and B.

We have also used a specific sales or contract form at very infrequent intervals since March 13, 1934, a sample of which is attached hereto marked Respondents' Exhibit No. 3463-A and 3463-B.

Both our various forms for specific sales contracts and our quotations were changed from time to time at the independent suggestions of our officials and our attor-
42898 neys, and not at the direction or suggestion, or under the influence of any other Respondent, or other person or party.

5. I have been the sales manager of our company since December 16, 1925. I have also been treasurer of our company since December 16, 1925, and a member of the Board of Trustees since February 11, 1929. As such I have not only had charge of the sales and marketing practices of the company but also collaborated with other senior officials of the company in the determination of the company's sales practices. From my own knowledge our company has never entered into any agreement or understanding with any other Respondent or cement company as to the prices at which it will sell its cement to its customers, public or private.

6. Our company has never, either through The Cement Institute or otherwise, used any freight rate information service, or distributed any information with reference to freight rates to its competitors for any pricing purposes, and has never followed any practice in conjunction with any other Respondent leading to the adoption of uniform freight rates as the basis of any pricing policy.

I did attend a meeting referred to in Commission's Exhibit 1199-A on November 8, 1929, attended by representatives of four cement companies and a freight rate expert, but this was merely for the purpose of studying proposed
changes in freight rates which would have affected
42899 all of the cement companies involved. Neither prices of cement nor the adoption of uniform rates nor any other joint action which would have any direct or indirect influence upon prices were discussed at this meeting.

7. Our company has never entered into any agreement or understanding, either oral or in writing, with any other Respondent or any other cement company with reference to the diversion of shipments in transit from an anticipated destination to any other destination, and has never entered into any agreement or understanding with any other Respondent or other cement company, or any other party for the taking of cooperative measures by the use of provisions in contract forms in order to eliminate such diversions. From time to time our various contract and quotation forms have contained clauses designed to prevent a dealer or other customer from diverting shipments from the stated destination to any other place. The only reason for this is to protect our regularly established and recognized dealers in their home trading areas.

Until I learned of it in connection with this case I did not know of the so-called non-diversion stamp used on railroad bills of lading. This company has never used it and we have had no communications or discussions with traffic managers or other officials of any other cement company or party regarding the use or non-use by us of such a stamp.

8. To my knowledge we have never received re-
12900 quests for f. o. b. mill bids from State, county, or city projects except for use within the immediate vicinity of our mills where delivery could not be made by rail transportation.

9. Our company has never made any classification of customers, nor has it been a party to any agreement or understanding with reference thereto except as Article XI of the Cement Code may be so construed. Its customers include the Federal Government and various agencies thereof, the State Government and various agencies thereof, various counties and departments thereof, municipalities and departments thereof, school districts, water irrigation and drainage districts and other public bodies, highway contractors, general construction contractors, public utility corporations, railroads, concrete products manufacturers and other private corporations and dealers. There is no clear line of demarcation between sales to dealers and the other customers above outlined. As a general practice the company does not engage in the retail sale or distribution of cement to small private users. This is handled almost exclusively by

dealers because the company is not equipped to handle the ordinary run of retail business. It has, however, repeatedly, and as a general practice, sold to large contractors, public utility corporations and private corporations engaged in large construction projects. To my knowledge our company has never discussed with any other Respondent or any other cement company, either
42901 in the Pacific Northwest or elsewhere, any classifications of customers, or any classification of cement sales.

Our company has sold cement to many classes of dealers. At no time have we suggested or requested that a dealer be a member of any association before we sold him, nor have we at any time refused to sell a dealer because he was not a member of an association. We have sold as dealers such business concerns as sand and gravel companies, ready-mix plants, concrete products plants, retail lumber yards, hardware stores, contractors, wharf and dock companies, saw mills, and other business firms which might not come within our usual concept of a dealer. We sold to these buyers because, in many cases, they handled other building materials and in their respective communities were considered in the business of retailing building supplies. Our company does not follow any rigid rule with respect to the definition of a dealer but considers every applicant for a dealership individually and decides whether or not to sell him.

We have always sold to manufacturers of concrete products directly whenever they have requested us and so far as we know the dealers got very little, if any, of this business.

As far back as 1922 we have sold to the railroads on a price f. o. b. our mill or nearest junction point, and still do so.

42902 We have felt from the beginning that the projects on which the W. P. A. furnished the cement was work which would normally be furnished by dealers, and have often refrained from bidding thereon, having in mind both the importance of dealer good will and the fact that this business is somewhat similar to the ordinary run of retail business which we are not as well equipped to handle as the dealers. Furthermore, many W. P. A. invitations call for quotations on less than carload lots

and we are not interested in selling on this basis. Furthermore, a great many W. P. A. invitations call for prices f. o. b. the projects. This would require cartage from the rail destination to the project and the dealer is equipped to supply this delivery service while we are not.

10. Except for the provisions of the N. R. A. Code this company has never entered into any agreement or understanding, either oral or in writing, with any other Respondent or with any other cement company with reference to discounts, prepaid freights, claims in transit, differential in paper bag price, procedure in reducing or advancing prices or other terms of sale. There have been substantial differences in the practices with reference to such terms of sale as followed by this company and its competitors as indicated by the following statements:

Our discount terms have varied according to competitive conditions as we met them. For several years
42903 prior to the Code we allowed a 25 cent per barrel discount on our dealer business and 10 cents per barrel on contractors' business. For a number of years prior thereto we had allowed the same discount of 10 cents per barrel for cash in 10 days to both dealers and contractors. The 10-day discount period was in effect until the time of the Code when we extended it to 15 days to conform to the provisions of the Code. There are, however, exceptions. For example, we allowed one customer 2 percent for cash in 15 days on a single large order. Furthermore, we permit certain large customers to make bi-monthly payments and take cash discounts on a bi-monthly basis. Furthermore, when we learned in 1926 that a competitor had changed its discount period from 10 to 15 days we met its terms of discount where we competed with it for business, but on other sales we limited the discount period to 10 days. For a number of years past, down to the present time, information which we have obtained from our dealers indicates that Oregon and California companies with which we competed have had a discount of 10 cents per barrel for cash on the 10th day of the month following. On the other hand, while competing with them we have continued our practice of allowing only a 15-day period, whereas under the practices of such Oregon and California companies the

customers have had much longer periods within which to take advantage of the discount.

Up to about 1928, we required our customers to
42904 prepay freight on empty cement bags returned. This was a requirement of the railroad companies. However, with the advent of new mills in Western Washington, with different freight rates applying on empty cement bags returned, we could see that we might be placed in a different competitive position by requiring the customers to continue this practice. We therefore notified our customers about December 27, 1928, that we would absorb the freight back on empty cement bags, and that bags could be returned "collect" if the railroads permitted them to be handled in this manner; however, if the railroads insisted on freight being prepaid, we would allow the customer the amount of the prepay on receipt of prepaid freight bill. I have no knowledge, and, so far as I know, no other official in our company has any knowledge, of the practices of our competitors with reference thereto.

I have never known, and do not now know, and, so far as I know, no one in our company is advised as to the practices followed by any other cement company as to claims for loss of cement in transit. Our practice has been evolved as a result of our own customer and railroad relations.

Our practice in connection with claims for loss of cement in transit has been as follows:

Should a customer advise us that he has had loss or damage to his cement, we ask him to submit to us an
42905 invoice in duplicate itemizing the details of the claim and paid freight bill with railroad agent's notation of loss thereon. We then enter the claim with the railroad company for the customer. If claim is paid, we either credit the customer's account with the amount received, or endorse the check over to the customer. In some instances, where the claim is for shortage, we will stand the loss rather than incur the ill will of the customer. We do not recall any claims that we have entered for loss or damage in transit which have not been allowed by the railroad company.

We have had varying differential in the price that we

charged for paper bags. It has at different times been 10 cents, 15 cents, and 20 cents over the net cloth price. While the differential at most of the destinations which we serve is 15 cents, at the same time at a portion of the destinations we have a differential of 20 cents, meeting competitive conditions.

During the Code period we followed the provisions contained therein of giving customers five days' advance notice of price advances. Prior to the Code and subsequent to the Code we had followed no definite practice. If we felt the price should be advanced we advised our customers simultaneously so far as practical and gave them a few days in which to advise us of bookings at the lower price. We endeavored to check deliveries to dealers at the lower price to make sure that they did not receive more cement than the quantity to which
42906 they were entitled. Our practice with reference to price advances and declines varies according to the circumstances of each case. On our own price advances or declines we allow what we consider to be a reasonable time in consideration of the circumstances and this constantly varies, and the same is true of such price advances and declines of other customers which we make for competitive reasons, but as indicated elsewhere herein, we have not always followed competitors' price advances or declines. While we generally learn in a short period of time of a price advance or decline made by a competitor, there are occasions where we do not receive information until much later; for example, we have just learned that one of our competitors reduced the price of its quick strength cement 43 cents per barrel some eight months ago in Longview, Wash., where we do business.

We have not had a set policy in the matter of dealer practice at the time of price reductions. If a car is in transit to a dealer at the time the price is reduced we may send him corrected invoices at the new price. Sometimes dealers have asked us to protect them for the new price on cement in the dealer's warehouse and we have at times acceded to this request. We do not know what the policies of our competitors are with reference thereto, and, so far as I know, none of our competitors are aware of our practices.

For many years it was the custom of this com-
42907 pany to request that customers submit paid freight bills to us for credit against their account. However, we found that many of our customers insisted on keeping the paid freight bill for their own records, and that our persistency in requesting them caused hard feelings. We therefore discontinued the practice.

At the time the plant of the Pacific Coast Cement Company was built in Seattle, we were forced into another practice, due to the fact that the railroads required that cement handled by switch movement in Seattle must have the switching charge prepaid. In order to keep a competitive basis with the new plant at Seattle, in 1939, we inaugurated the practice of prepaying freight on shipments from our mill in Concrete, Wash., to Seattle, consigned to paving contractors. We made separate arrangements with each of our dealers in Seattle that we would carry on our previous practice of shipping our cement freight collect.

This custom, however, has recently been changed and we are now prepaying freight to all consignees in Seattle. I do not know what practices are followed by our competitors, except in the case of one competitor who has made announcements from time to time of its practices.

We have not adopted a general practice of prepaying freight although we have been advised by dealers that
42908 one of our competitors in eastern Washington put this plan in effect in the State of Washington shortly after January 1, 1940.

We have not discussed this plan with any of our competitors. We have felt that to follow this plan would adversely affect us in two respects; it would add a heavy burden to the amount of our accounts receivable, and would increase our credit hazards.

11. Our company has never boycotted or threatened to boycott dealers, customers, or others who trade in imported cement, has never resorted to espionage or similar methods directed against those who handle imported cement and has never been a party to any concerted and uniform deviation from prices which would prevail at centers of importation of cement for the purpose of boycotting the same.

12. Our company is not a price leader. No single com-

pany is a price leader. On the contrary, price changes have been initiated from time to time by several different companies not only during the so-called price war of 1930 and 1931 but also since. Furthermore, there have been instances of price advances and declines which have not been followed by this company.

13. Our company has never agreed to adopt the so-called compendium, or to follow any of the practices outlined therein and it has not caused said compendium to be circularized or distributed to its own sales force or to its dealers, or to any other persons or parties. The
42909 marketing practices of this company have been adopted or followed as a result of the individual and independent action of the management.

Furthermore, for illustration purposes, I am setting forth below samples of the differences between our practices and those set forth by article and section in the Compendium:

Article II—Section 2: We have never limited our deliveries to the fifteen day period noted in the Compendium.

During the Code period we adopted a quotation form, specific sales orders form, and specific sales contract form, which included acceptance within fifteen days from the date bids were opened or the date prices were submitted, whichever was the later. My recollection is that we have never held strictly to the line on this provision.

We have never made shipment on the fifteenth day without notice to the buyer, as outlined in this section.

Article II—Section 3: We have taken very few written orders or contracts for future delivery beyond 15 days. Those we have taken covered specific contracts.

We have never used period requirement forms or orders in connection with our sales to concrete products manufacturers.

Article II—Section 4: We have only in a few isolated instances used a form, specific sales order, similar to Exhibit "A". We have used a few specific sales contracts, similar to Exhibit "B."

We have never used the specific sales order or spe-
42910 cific sales contract to cover the contingency in paragraph (e).

Article II—Section 5: We have never used either order or contract forms for quarterly contracts.

Article III—Section 2(b): We have at times allowed cash discount after the expiration of the 15-day or semi-monthly period. We have allowed deduction from the remittance for cloth sacks to be returned or in transit and not yet credited.

Article III—Section 2(d): We have allowed unearned discounts.

Article IV—Section 1: In addition to the specifications listed herein, we have included in some of our quotation, order and contract forms the further statement that our cement complies with the specifications of the State of Washington Highway Department and the City of Seattle Engineering Department.

Article V—Section 8: We have at times prepaid freight on cement shipments consigned to contractors at stations to which railroad tariffs did not require prepayment. This was done as an accommodation to the customer. For example, a highway contractor taking cement at the station nearest to his contract and who did not maintain on the job a complete accounting office, would ask us to prepay freight for his account.

42911 Article V—Section 11: We have on one or two instances painted signs on dealers' warehouses advertising our cement. In addition to the sign the painter would at the same time paint the entire side of the warehouse without charge to the dealer.

Article V—Section 14: We have at times purchased bonds or other security issued to finance construction work.

We have at times accepted such bonds as payment in part for cement.

Article V—Section 20: We have at times furnished articles or facilities of a definite physical nature, by loan or lease or otherwise, to customers without receiving full consideration therefor.

14. I have no recollection of ever having read the so-called Code of Ethics until I was requested to do so for the purpose of preparing the comparison of our practices with the Code of Ethics in connection with the preparation

of this stipulation, and whether such code ever came into effect or not, in any event it has never been adopted or used by this company. We have had nothing to do with it, do not consider ourselves bound by any of its provisions and it is of absolutely no interest or effect so far as the practices of this company are concerned.

Furthermore, for illustration purposes, I am setting
42912 forth below examples of the differences between our practices and those set forth by article and section in the Code of Ethics.

Article I. Standardization of Product: In addition to guaranteeing to meet the existing standard specifications of the American Society for Testing Materials, The American Standards Association, and the United States Government Master Specifications, we have at times guaranteed that our cement would meet the specifications of the State of Washington Highway Department and the City of Seattle Engineering Department.

Article II. Standardization of Sales Contract: In spite of the fact that the Code of Ethics was drafted several years prior to the enactment of the Code, we did not adopt a standard form of sales contract until the Code became effective.

Article IV. Secret Rebates and Price Concessions: We have at times paid and allowed secret rebates, refunds, credits or unearned discounts.

We have at times purchased bonds or other security issued to finance construction work.

We have in one or two instances painted signs on dealers' warehouses advertising our cement. In addition to the sign the painter would at the same time paint the entire side of the warehouse without charge to the dealer.

We have at times prepaid freight on cement ship-
42913 ments consigned to contractors at stations to which railroad tariffs did not require prepayment. This was done as an accommodation to the customer. For example, a highway contractor taking cement at the station nearest to his contract, and who did not maintain on the job a complete accounting office, would ask us to prepay freight for his account.

We have at times allowed more for cloth sacks returned

by purchasers than they were actually entitled to credit for under our published terms and conditions of sale. We have at times allowed the purchaser for damaged sacks which were not in serviceable condition. We have at times paid purchasers of cement for sacks bearing other than our brand.

15. This company has available as part of its sales organization engineering and other technical personnel. They very frequently render services to contractors, prospective builders, architects, engineers, dealers, concrete products manufacturers, ready-mix operators, governmental agencies, and others on various technical matters. The rendering of these services has very often influenced prospective customers as to whether or not they will buy cement from us or from some competitive company. The services which we render in this connection have an actual cash value to the customer. Among the services which this company provides are the following:

42915 16. The dealers of this company provide facilities for local storage and delivery of cement to the ultimate consumer, handling the credit risk of the small sales along with the large sales, and promotes the use of our cement in the locality where he is situated. In many instances he assists in the promotion of paving, sidewalks, water supply, and other municipal improvements. All of these things are in addition to the services which this company can provide and does provide at the location of these individual dealers. If the dealer were eliminated, this company would have to perform identical or similar services at considerable expense.

17. We have two standard brands of cement, one known as "Superior" manufactured at our concrete plant, which is both owned and operated by us, and the other known as the "Diamond" brand manufactured at the Seattle

42916 plant owned by the Pacific Coast Cement Company but operated by us under lease. Both brands are well above the minimum standard specifications of the A.S.T.M. There is a difference in the chemical analyses and physical tests of our two brands, but since both plants are operated by us the prices must be kept on a competitive basis. We must make our cement to at least pass A.S.T.M.

specifications for the reason that many private buyers insert this requirement in their invitation for bids and purchase orders.

We must also make our standard cement to meet Bureau of Standards specifications No. SS-c-191a—for the reason that our dealers are often called upon to supply governmental and other agencies with cement to meet these specifications. Neither the dealer nor ourselves know in advance that this cement will be required. Therefore, our cement must be made to pass these specifications.

18. An increasing and considerable portion of the cement we produce must pass a number of special tests, due to revisions in the specifications issued principally by governmental purchasing bodies. These increased specifications require finer grinding and have reduced our daily output, and have therefore increased our unit cost of manufacturing.

Prior to 1925 there was one generally recognized specification for cement. Shortly thereafter varying specifications came into vogue. With but one type of cement, the matter of storage was comparatively simple. How-
42917 ever, with the many revisions which have come into the manufacturing and selling picture, we have found that our storage is inadequate. For example: During recent years we have had to have as many as five or six different types of cement available, principally for different agencies of the Government. This has entailed additional duties on our chemical staff, our manufacturing force, and our sales force, in order to insure the continuity of supply to take care of the demands placed upon us.

19. The Superior Company has never forwarded to the Cement Institute land grant information. Any land grant information which we received from The Cement Institute was used merely for competitive purposes. At no time were our bids to governmental agencies based solely upon land grant figures supplied by The Cement Institute.

Our company has never entered into any agreement or understanding, either orally or in writing, with any other Respondent or any other company or party with reference to the employment of a so-called multiple basing point system or any other system of pricing. Furthermore, our

company has never received any other form of statement or commitment, either orally or in writing, from any of its competitors, that they would calculate their prices according to a so-called multiple basing point system or any other system of pricing and our company has been free at all times to adopt any method or practice of calculating its prices.

42918 20. This company has at all times made effective the same price to dealers and other purchasers located within the metropolitan areas of the Cities of Seattle and Tacoma.

Prior to 1929, when we were selling f.o.b. Concrete only, this was accomplished by allowing a deduction from the invoice of the differential in freight. For example, a customer located on the Great Northern in Seattle had one freight rate from Concrete, a customer located on the Northern Pacific had a higher freight rate. Our invoices showed an equalization of the two rates so as to place the customers on the same competitive basis.

After we started the practice of selling f.o.b. destination our invoices showed the actual amount of freight deduction to be made by the purchaser. This amount varied according to the routing given the car from Concrete to Seattle or Tacoma.

The effect of this practice was to place all purchasers within the metropolitan areas of these two cities on a competitive basis as far as our prices were concerned.

21. I have been connected with this company and its predecessor Superior Portland Cement Company, for 27 years and during all this period of time a considerable volume of our cement sales has been made at secret prices below our regularly quoted prices. To my knowledge, this practice of quoting secret prices has been fol-

42919 lowed by our company as well as most, if not all, of our competitors, and it has not been confined to any particular period of time but has continued throughout the entire period of my association with the company with the exception of the Code period when all prices had to be filed. In order to illustrate the continuity of this practice during a period of six years prior to the filing of the complaint in this proceeding, I am listing below a number

of instances where our company has quoted secret prices in order to obtain business which otherwise would probably have been taken by our competitors.

On or about July 21, 1931, we sold to the Ward Construction Company 23,500 barrels of cement in cloth sacks for delivery at Rockport, Wash., at a price of $2.23 per barrel. Our list price at Rockport at that time was $2.94.

On or about July 20, 1931, we sold to Elliott, Stroud Bros. & Seabrook 30,000 barrels of cement in cloth sacks for delivery at Seattle, Wash., at a price of $2 per barrel. Our list price at Seattle at that time was $2.85.

On or about August 1, 1931, we sold to Ervig & Harris 5,400 barrels of cement in cloth sacks for delivery at Alderwood, Wash., at a price of $2.21 per barrel. Our list price at Alderwood at that time was $3.07.

On or about July 9, 1931, we sold to the Midstate Contracting Company 8,600 barrels of cement in cloth sacks for delivery at Yakima, Wash., at a price of $2.82 42920 per barrel. Our list price at Yakima at that time was $3.42.

On or about March 21, 1932, we changed our quotation to one dealer, the Long Bell Lumber Company in Vancouver, Wash., from $2.80 per barrel in paper bags to $2.65 per barrel. This change was made to meet competitive price found in that territory. However, we did not change our own typewritten price lists.

On or about September 12, 1932, we sold to the Builders Material 5,000 barrels of cement in cloth sacks for delivery at Longview, Wash., at a price of $3.08 per barrel. Our list price at Longview at that time was $3.23.

On or about January 12, 1932, we sold to J. P. Telander 600 barrels of cement in cloth sacks for delivery at Auburn, Wash., at a price of $2.49 per barrel. Our list price at Auburn at that time was $2.66.

On or about January 18, 1932, we sold to the Lumbermen's Mercantile Company 132 barrels of cement in paper sacks for delivery at Shelton, Wash., at a price of $2.89 per barrel. Our list price at Shelton at that time was $2.93.

On or about February 1, 1932, we sold to L. Coluccio 198 barrels of cement in cloth sacks for delivery at Oakville, Wash., at a price of $3.04 per barrel. Our list price at Oakville at that time was $3.08.

On or about April 14, 1932, we sold to V. H. Lindsay 185

barrels of cement in cloth sacks for delivery at Gold-
42921 endale, Wash., at a price of $3.12 per barrel. Our list price at Goldendale at that time was $3.45.

On or about April 19, 1932, we sold to the West Coast Construction Company 1,138 barrels of cement in paper sacks for delivery at Shelton, Wash., at a price of $2.74 per barrel. Our list price at Shelton at that time was $2.93.

On or about January 23, 1932, we sold to the Hedeen Construction Company 1,100 barrels of cement in cloth sacks for delivery at Pasco, Wash., at a price of $3.56 per barrel. Our list price at Pasco at that time was $3.74.

On or about May 12, 1932, we sold to the McDonald Construction Company 6,000 barrels of cement in paper sacks for delivery at Fairbanks, Alaska, at a price of $2.05 per barrel. While this cement was destined for Fairbanks, Alaska, it was sold to the contractor f.o.b. car on dock, Seattle. Our list price at Seattle at that time was $2.65.

On or about May 6, 1932, we sold to Carl Bjork 425 barrels of cement in paper sacks for delivery at Aberdeen, Wash., at a price of $2.74 per barrel. Our list price at Aberdeen at that time was $2.93.

On or about July 16, 1932, we sold to Holmberg & Norman 2,400 barrels of cement in paper sacks for delivery at Mount Rainier, Wash., at a price of $2.45 per barrel. While this cement was destined for Mount Rainier, Wash., it was sold to a contractor f.o.b. Seattle. Our list price at Seattle
42922 at that time was $2.50.

On or about August 4, 1933, we sold to Fiorito Bros. 7,500 barrels of cement in cloth sacks for delivery at North Bend, Wash., at a price of $3.03 per barrel. Our list price at North Bend at that time was $3.17.

On or about October 2, 1933, we sold to Fiorito Bros. 11,700 barrels of cement in cloth sacks for delivery at North Bend, Wash., at a price of $3.03 per barrel. Our list price at North Bend at that time was $3.13.

On or about April 27, 1933, we sold to Elliott & Company 1,000 barrels of cement in paper sacks for delivery at Mount Rainier, Wash., at a price of $2.45 per barrel. While this cement was destined for Mount Rainier, Wash., it was sold to the contractor f.o.b. Seattle. Our list price at Seattle at that time was $2.50.

On or about July 27, 1933, we sold to the Western Construction Company 1,000 barrels of cement in paper sacks

for delivery at Ashford, Wash., at a price of $2.89 per barrel. Our list price at Ashford at that time was $3.12.

On or about August 3, 1933, we sold to Holmberg & Norman 200 barrels of cement in paper sacks for delivery at Seattle, Wash., at a price of $2.45 per barrel. Our list price at Seattle at that time was $2.50.

On or about November 10, 1933, we sold to the Western Construction Company 2,400 barrels of cement in 42923 paper sacks for delivery at Chehalis, Wash., at a price of $2.83 per barrel. Our list price at Chehalis at that time was $2.85.

On or about April 22, 1935, we sold to the Weyerhaeuser Timber Company 16,000 barrels of cement in cloth sacks for delivery at Everett, Wash., at a price of $2.94 per barrel. Our list price at Everett at that time was $2.94. While we sold the consumer direct at our regular dealer price at point of destination, we, at the same time, protected the dealer on this particular transaction for 15 cents per barrel commission.

On or about December 11, 1935, we changed our quotation to our dealer, Columbia Feed & Fuel Company, in Vancouver, Wash., from $2.85 per barrel in cloth sacks to $2.50 per barrel. This change was made to meet competitive price found in that territory. However, we did not change our own typewritten price list.

On or about June 23, 1936, we changed our quotation to our dealer, Columbia Fruit Union, in Bingen, Wash., from $2.96 per barrel in cloth sacks to $2.90 per barrel. This change was made to meet competitive price found in that territory. However, we did not change our own typewritten price lists.

On or about August 7, 1936, we sold to the Weyerhaeuser Timber Company 1,200 barrels of cement in cloth 42924 sacks for delivery at Columbia Junction, Wash., at a price of $2.65 per barrel. Our list price at Columbia Junction at that time was $2.65. While we sold the consumer direct at our regular dealer price at point of destination, we at the same time protected the dealer on this particular transaction for 15 cents per barrel commission.

On or about September 16, 1933, we sold to Fred G. Redmon 132 barrels of cement in paper sacks for delivery at Bingen, Wash., at a price of $2.65 per barrel. Our list price at Bingen at that time was $2.71.

On or about September 16, 1936, we sold to the Austin

Company 21,000 barrels of cement in bulk for delivery at Everett, Wash., at a price of $2.39 per barrel. Our list price at Everett at that time was $2.39. While we sold the consumer direct at our regular price at point of destination we, at the same time, protected the dealer on this particular transaction for ten cents per barrel commission.

On or about March 11, 1936, we sold to the Colonial Construction Company 3,000 barrels of cement in cloth sacks for delivery at Hood, Wash., at a price of $2.85 per barrel. Our list price at Hood at that time was $2.96.

On or about June 29, 1937, we changed our quotation to our dealer, the Wyers Trading Company, in Bingen, Wash., from $2.96 per barrel in cloth sacks to $2.75 per barrel.

This change was made to meet competitive price we
42925 found in that territory. However, we did not change our own typewritten price lists.

There have been many instances where we have lost substantial orders to competitors because we later found out from either dealers, contractors, or from other sources that lower secret prices were quoted on such business by our competitors. While the instances given above are confined to the six-year period preceding the filing of the complaint; nevertheless, the same practice of secret price cuts was prevalent as long as I have been connected with the company and still continues to be the practice followed by us and our competitors.

22. There is no connection between the Superior Cement Corporation of Portsmith, Ohio, and this company, which is known as the Superior Portland Cement, Inc., whose principal place of business is at Seattle, Wash.

42927 (RESP. EXS. 3456, 3457, 3458-A, 3458-B, 3459-A, 3459-B, 3460-A, 3460-B, 3461-A, 3461-B, 3462-A, 3462-B, and 3463-A, 3463-B, were offered and received in evidence.)